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Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911

No. 986. 192

THE DIAMOND COAL AND COKE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED FEBRUARY 16, 1912.

(23,062)

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ition for appeal to the Supreme Court of the United States		1086
ssignment of errors on appeal to the Supreme Court of the United States		1087
Bond on appeal to the Supreme Court of the United States		1093
Affidavit in support of petition for appeal to the Supreme Court of the United States		1095
Order allowing appeal to the Supreme Court of the United States		1096

BLUEPRINTS

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1435

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1437

SHEET 2 4—959. **ORIGINAL HOMESTEAD ENTRIES**

REGISTER OF RECEIPTS issued by the Receiver of Public Moneys at , for Lands entered under the Homestead Act, from the day of to the day of the same month, inclusive.

Exhibit No.	Date of Receipt	No. of Receipt	By Whom Purchased: Name	By Whom Purchased: Residence	Tract Purchased: Section or part of sec.	Tract Purchased: No. of Section	Tract Purchased: No. of Township	Tract Purchased: No. of Range	Quantity: Acres	Quantity: 100ths	Price per Acre: Dollars	Price per Acre: Cents	Fees: Dollars	Fees: Cents	Commissions: Dollars	Commissions: Cents	
174	Jany. 29, 1901	1997	Thomas Sneddon Assignee of Daniel Farrington	Diamondville, Wyo.	Lots 6 & 7	6	19	116	84	29	2	50	5	00	6	00	F. C. 750 E. x R. No. 382
182	Feby. 4, 1901	2002	Thomas Sneddon Assignee of Mahala C. Wilcox, widow of Charles Wilcox De.	" "	E½ NW¼	18	19	116	80	00	2	50	5	00	6	00	F. C. 753.
189	May 22, 1901	2077	Thomas Sneddon Assignee of Amos Wowall	" "	N½ SE¼	18	19	116	80	00	2	50	5	00	6	00	F. C. 780.
197	Feby. 4, 1901	2000	Thomas Sneddon Assignee of Henry Harris	" "	N½NE¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 751.
205	Nov. 2, 1900	1929	Daniel F. Harrison Assignee of George W. Brown	" "	S½NE¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 715.
213	Nov. 2, 1900	1931	Daniel F. Harrison Assignee of Parley Post	" "	N½SE¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 717.
221	Mch. 9, 1901	2020	Daniel F. Harrison Assignee of Jacob R. Deardoff	" "	S½SE¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 760.
229	Feby. 4, 1901	2001	Thomas Sneddon Assignee of Mortimer E. Crandall	" "	N½NW¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 762.
237	Nov. 2, 1900	1930	Daniel F. Harrison Assignee of John A. Thomas	" "	S½NW¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 716.
245	Apl. 3, 1903	2386	Daniel F. Harrison Assignee of Wm. Cooley, alias Erastus Harris	" "	N½SW¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 886.
253	Mch. 22, 1902	2240	Daniel F. Harrison Assignee of Andrew M. Allen	" "	S½SW¼	12	19	117	80	00	2	50	5	00	6	00	F. C. 822.

U. S. Land Office,
Evanston, Wyoming.

I, Thomas V. Davis, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy of so much of the Records of the U. S. Land Office at Evanston, as are above set forth.

Witness my hand this 27th day of January, 1908.

Thomas V. Davis,
Register.

4—600

TRACT BOOK

NSHIP No. RANGE No. , DISTRICT OF

DESCRIPTION OF TRACT				CONTENTS		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER	Date of Sale	Number of Receipt and Certificate of Purchase	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
Part of Section	Section	Township	Range	Acres	100ths	Dol.	Cts.	Dol.	Cts.						Volume	Page
Lots 1 & 2	18	20	116	94	32	2	50	10	00	Thomas Sneddon Ass. J. J. Stockman	Jany. 15, 1903	2424	F. C. 908 Pat. Nov. 10, 1903			
Lots 3 & 4	18	20	116	94	17	2	50	10	00	Daniel F. Harrison	Nov. 2, 1900	1933	F. C. 719			
E½ SW¼	"	"	"	80	00			10	00	Thomas Sneddon Ass. W. E. Swihart	Jany. 19, 1901	1993	F. C. 747			
N½ NE¼ NE¼ NW¼	"	"	"	120	00			9	00	" " " Thomas Patterson	Feby. 26, 1901	2016	F. C. 757			
S½ NW¼ SE¼ NW¼	"	"	"	120	00			9	00	" "	May 9, 1901	2060	F. C. 775			
N½ SE¼	"	"	"	80	00			6	00	" "	May 9, 1901	2061	F. C. 776			
S½ SE¼	"	"	"	80	00			6	00	" "	Jany. 1, 1901	1988	F. C. 774 Pat. July 18, 1901			
W½ NW¼	20	"	"	80	00			5	00	" " " Geo. G. Galliher	July 1, "	2106	F. C. 780			
W½ SW¼	"	"	"	80	00			200	00	" " " Murdock Valentine	Dec. 1, 1900	1962	F. C. 733			
SE¼ NW¼ NE¼ SW¼	"	"	"	80	00			10	00	" " " John Fessler	Jany. 19, 1901	1992	F. C. 746			
Lots 1 & 2	30	"	"	91	80			6	50	" " " Wm. B. Peters	Feby. 4, 1901	2003	F. C. 754			
E½ SW¼	"	"	"	80	00			6	00	Daniel F. Harrison	Nov. 2, 1900	1932	F. C. 718 Pat. July 18, 1901			
N½ NE¼ NE¼ NW¼	"	"	"	120	00			9	00	" " " Ass. John B. H. Havens	Feby. 26, 1901	2017	F. C. 758			
S½ NE¼	"	"	"	80	00			5	00	Thomas Sneddon Ass. Whitley Collyer	Oct. 4, 1905	2729	F. C. 1139 Pat. June 21, 1906			
N½ SE¼	"	"	"	120	00			10	00	" " " Wm. Van Dyke	Feby. 23, 1901	2011	F. C. 755 Pat. Dec. 17, 1901			
S½ SE¼	"	"	"	80	00			6	00	Daniel F. Harrison " Elizabeth Mathews	Feby. 25, 1904	2587	F. C. 1015 Pat. June 30, 1905			
Lots 1, 2, 3	6	19	"	124	50			10	00	Thomas Sneddon	Nov. 2, 1900	1934	F. C. 720			
S½ NE¼ SE¼ SE¼	"	"	"	120	00			10	00	" " " Wm. J. McGinn	Feby. 23, 1901	2012	F. C. 756, Pat. Dec. 17, 1901			
Lots 4 & 5 SE¼ NW¼	"	"	"	122	39			10	00	" " " Lindsay Murdock	Jany. 19, 1901	1991	F. C. 745, Pat. July 18, 1901			
N½ SE¼	"	"	"	80	00			5	00	" " " Philo L. Sherman	Jany. 19, 1901	1995	F. C. 748			
SW¼ SE¼	"	"	"	40	00			3	00	See Sec. 30-20-116	Feby. 23, "	2011	F. C. 755 Pat. Dec. 17, 1901			
E½ SW¼	"	"	"	80	00			5	00	Thomas Sneddon Ass. Nathan B. Lewis	Jany. 29, "	1996	F. C. 749			
Lots 6 & 7	"	"	"	84	29			5	00	" " " Daniel Farrington	Jany. " "	1997	F. C. 750			
E½ NW¼	18	"	"	80	00			6	00	" " " Mahala Wilson	Feby. 4, "	2002	F. C. 753			
N½ SE¼	18	"	"	80	00			5	00	" " " Amos Wowall	May 22, "	2077	F. C. 780			
N½ NE¼	"	"	"	80	00			6	00	" " " Henry Haines	Feby. 4, "	2000	F. C. 751			
S½ NE¼	12	19	117	80	00			6	00	Daniel F. Harrison	Nov. 2, 1900	1929	F. C. 715			
N½ SE¼	"	"	"	80	00			6	00	" " "	" " "	1931	F. C. 717			
S½ SE¼	"	"	"	80	00			6	00	" " " Ass. Jacob R. Deirdoff	Mch. 9, 1901	2020	F. C. 760			
N½ NW¼	"	"	"	80	00			6	00	Thomas Sneddon Ass. Mortimer E. Crandall	Feby. 4, "	2001	F. C. 752			
S½ NW¼	"	"	"	80	00			6	00	Daniel F. Harrison	Nov. 2, 1900	1930	F. C. 716			
N½ SW¼	"	"	"	80	00			6	00	" " " " Wm. Cooley	Oct. 4, 1903	2386	F. C. 886 Pat. Mch. 1, 1904			
S½ SW¼	"	"	"	80	00			6	00	" " " " Andrew M. Allen	Mch. 22, 1902	2240	F. C. 822			

NOTE—Matter in Bold face type in red ink in original copy.

U. S. Land Office.
Evanston, Wyoming.

I, Thomas V. Davis, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy of so much of the records of the U. S. Land Office as are above set forth

Witness my hand this 27th day of January, 1908.

THOMAS V. DAVIS,
Register.

57—3286

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FILMING

1440 **FINAL HOMESTEAD ENTRIES** 4—031.

REGISTER OF SHEET 2 **HOMESTEAD ENTRIES.**

REGISTER OF ENTRIES made at the Land Office at under the Homestead Laws, from the

day of 190 to the day of the same month, inclusive.

Ex. No.	No. of Application	Date of Application	Tract Entered. Section or Part of Section.	No. of Sec.	No. of Township	No. of Range	Quantity Acres	Quantity 100ths	Name of Applicant	Residence	Fees	Commissions	Remarks
191	780	May 22, 1901	N½ SE¼	18	19	116	80	00	Thomas Sneddon Assignee of Amos Worrall	Diamondville, Wyo.		6 00	2077 Pat. Aug 29, 1901
199	751	Feby. 4, 1901	N½ NE¼	12	19	117	80	00	Thomas Sneddon Assignee of Henry Harris	" "		6 00	2000 Pat. Aug. 29, 1901
207	715	Nov. 2, 1900	S½ NE¼	12	19	117	80	00	Daniel F. Harrison Assignee of George W. Brown	" "		6 00	1929 Pat. Aug. 29, 1901
215	717	" " "	N½ SE¼	12	19	117	80	00	Daniel F. Harrison Assignee of Parley Post	" "		6 00	1931 Pat. July 9, 1901
223	760	Mch. 9, 1901	S½ SE¼	12	19	117	80	00	Daniel F. Harrison Assignee of Jacob R. Deardoff	" "		6 00	2020 Pat. Aug. 29, 1901
231	752	Feby. 4, "	N½ NW¼	12	19	117	80	00	Thomas Sneddon Assignee of Mortimer E. Randell	" "		6 00	2001 Pat. Aug. 29, 1901
239	716	Nov. 2, 1900	S½ NW¼	12	19	117	80	00	Daniel F. Harrison Assignee of John A. Thomas	" "		6 00	1930 Pat. July 9, 1901
247	886	Apl. 3, 1903	N½ SW¼	12	19	117	80	00	Daniel F. Harrison Assignee of William Cooley alias Erastus Havens	" "		6 00	2386 Pat. March 1, 1904
255	822	Mch. 2, 1902	S½ SW¼	12	19	117	80	00	David F. Harrison Assignee of Andrew M. Allen	" "		6 00	2240 Pat. Sept. 26, 1902

U. S. Land Office.
Evanston, Wyo.

I, Thomas V. Davis, do hereby certify the above and foregoing to be a true, correct and complete transcript, and so much of the records of the U. S. Land Office at Evanston as are above set forth.

Witness my hand this 27th day of January 1908.

THOMAS V. DAVIS,
Register.

1441

PATENTS

Exhibit No.	Number of Certificate	To Whom Patented		Date of Patent	Where Rec'd Vol.	Where Rec'd Page	To Whom Sent	When	Where
8	908	Thomas Sneddon Ass.	John J. Stockman	Nov. 10, 1903	27	405	Clara E. Peterson	11/29/03	Evanston, Wyo.
20	719	Daniel F. Harrison "	Joseph J. Wilson	July 9, 1901	23	419	B. M. Ausherman	Aug. 19, 1901	" "
24	747	Thomas Sneddon "	Wm. E. Swihart	" " "	"	430	"	" " "	" "
32	757	" " "	Thomas Patterson	Aug. 29, 1901	14	494	"	Sep. 30, "	" "
40	775	" " "	Wm. Arthurs	" " "	"	498	"	" " "	" "
48	776	" " "	Eugene Stebbens	" " "	"	499	"	" " "	" "
57	744	" " "	Samuel Benjamin	July 15, "	31	491	"	Aug. 19, "	" "
65	790	" " "	Geo. G. Gallaher	Dec. 17, 1902	30	262	"	Jany. 26, 1903	" "
73	733	" " "	Frederick Valentine	July 9, 1901	23	425	"	Aug. 19, 1901	" "
78	746	" " "	John Fessler	" " "	"	428	"	" " "	" "
87	754	" " "	Wm. B. Peters	Aug. 29, "	14	493	"	Sept 30, "	" "
95	718	Daniel F. Harrison "	Sara V. Hoover	July 15, "	31	487	"	Aug. 19, "	" "
103	758	" " " "	B. F. Havens	Aug. 29, "	14	495	"	Sept. 30, "	" "
111	1139	Thomas Sneddon "	Whitley Collyer	June 21, 1906	32	496	**Not delivered (in U. S. Land Office)**		
120	755	" " "	Wm. Van Dyke	Dec. 17, 1901	19	473	B. M. Ausherman	Jany. 24, 1902	" "
128	1015	Daniel F. Harrison "	Elizabeth Mathews	June 30, 1905	18	358	"	July 1, 1905	" "
137	720	Thomas Sneddon "	Hiram Driggs	July 9, 1901	23	420	"	Aug. 19, 1901	" "
145	756	" " "	Wm. J. McGinn	Dec. 17, 1901	19	474	"	Jany. 24, 1902	" "
153	745	" " "	Lindsay Murdock	July 15, 1901	31	492	"	Aug. 19, 1901	" "
161	748	" " "	Philo L. Sherman	" 9, "	23	431	"	" " "	" "
169	749	" " "	Nathan B. Lewis	" 9, "	23	432	"	" " "	" "
177	750	" " "	Daniel Farrington	" 9, "	23	433	"	" " "	" "
185	753	" " "	Mahala C. Wilcox	Aug. 29, "	14	492	"	Sept. 30, "	" "
192	780	" " "	Amos Wowall	" " "	14	500	"	" " "	" "
200	751	" " "	Henry Harris	" " "	14	490	"	" " "	" "
208	715	Daniel F. Harrison "	Geo. W. Brown	July 9, "	23	416	"	Aug. 19, "	" "
216	717	" " " "	Parley Post	" " "	"	418	"	" " "	" "
224	760	" " " "	Jacob R. Dearderf	Aug. 29, "	14	496	"	Sept. 30, "	" "
232	752	Thomas Sneddon "	M. E. Crandell	" " "	14	491	"	" " "	" "
240	716	Daniel F. Harrison "	John A. Thomas	July 9, "	23	417	"	Aug. 19, "	" "
248	886	" " " "	Wm. Cooley	Mch. 1, 1904	4	318	"	Mch. 17, 1904	" "
256	822	" " " "	Andrew M. Allen	Sept. 26, 1902	30	140	"	Nov. 3, 1902	" "

NOTE:—Matter in Bold face type in red ink in original copy.

U. S. Land Office.
Evanston, Wyoming.
January 27, 1908.

I, Thomas V. Davis, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy of so much of the records of the U. S. Land Office at Evanston, as are above set out.

Witness my hand this 27th day of January, 1908.

THOMAS V. DAVIS,
Register

1442 Plaintiff's Exhibit No. 9.

Additional Entry

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. .....

Land Office,
Evanston, Wyo., May 1, 1899, 187..

I, Thomas Sneddon, of Diamondville, Uinta County, State of Wyoming, assignee of John J. Stockman, being entitled to the benefits of Section 2306 of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the Lots 1 (47.18a) & 2 (47.14 acres) of Sec. 18 T. 20 N R. 116 W. 6″ P. M. as additional to his original homestead on the W frac ½ NW 4 Sec. 18, T 27 N. R. 13 W Wisconsin which I, entered at Falls of St. Croix Sep. 16, 1867, per homestead No. 1208.

THOMAS SNEDDON,
Assignee of John J. Stockman.

Land Office, Evanston, Wyo., July 15th, 1903.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1443 Plaintiff's Exhibit No. 10.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo., May 1, 1899.

Thomas Sneddon, assignee of John J. Stockman, being duly sworn according to law, deposes and says that he is the iden-

tical person named as assignee who is an applicant for Government title to the Lots 1 & 2 of Sec. 18 Top. 20 N. R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON,
Assignee of John J. Stockman.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this first day of May, 1899.

BANJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states

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or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Thomas Sneddon Assignee of John J. Stockman. Lot 1-47.18 Lot 2 47.14. U. S. Land Office. Filed May 1, 2 P. M., 1899. Charles Kingston, Reg., Evanston, Wyo.

1444 Evanston, Wyoming, May 16, 1903.

J. Vance Lewis, Esq.,
Washington, D. C.

Dear Sir:

Calling attention to scrip application made by Thomas Sneddon as assignee of John J. Stockman for lots one and two, section eighteen, Tp. twenty north, Range One Hundred and Sixteen West, you are advised that the Commissioner of the General Land Office has acted upon such application and that additional evidence is required in the form of an affidavit from you showing that you are the bona fide owner of the right as per copy of letter from the Land Office herewith.

I sincerely trust that you may find it convenient to furnish the necessary evidence without extended delay.

Very respectfully,

B. M. AUSHERMAN.

1 Enc.

May 22/03.

Dear Sir:

On May 14/03 I filed in Gen. Land Office my affidavit as required by Comrs. letter of May 13/03.

Very truly

J. VANVE LEWIS.

U. S. Land Office. Filed Jun. 23, 1903. Charles Kingston, Reg., Evanston, Wyo.

1445 Plaintiff's Exhibit No. 11.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

CLOSE IN CENTER

Department of the Interior,

United States Land Office,

Evanston, Wyoming,
June 23rd, 1903.

Thomas Sneddon, assignee of John J. Stockman, being duly sworn according to law, deposes and says that he is the identical Person who is an applicant for Government title to Lots one (1) and two (2), Section Eighteen (18), Township Twenty (20) North Range One Hundred and Sixteen (116) West of the Sixth Principal Meridian; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyoming.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Kemmerer, Wyoming, within the Evanston, Wyoming land district, on this 23rd day of June, 1903.

CHAS. KINGSTON,
Register.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the

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purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

U. S. Land Office. Filed Jun. 23, 1903. Charles Kingston, Reg., Evanston, Wyo.

1446 Plaintiff's Exhibit No. 12.

Final Receiver's Receipt No. 908.
Application No. 2424.

Homestead.

Receiver's Office, Evanston, Wyo.

July 15th, 1903.

Received of Thomas Sneddon, assignee of Jno. J. Stockman the sum of Seven dollars and & Seven cents. being the balance of payment required by law for the entry of Lots one (1) & two (2) of Section 18, in Township 20 N., of Range 116 W. containing 94 & 32/100 acres, under Section 2291 of the Revised Statutes of the United States.

FRANK M. FOOTE,
Receiver.

$7.07.

$..... Testimony fee received. Number of written words, ...Rate per 100 words, ... cents.

Soldiers Additional Homestead.

Evanston, Wyo. F. C. 908. H. E. 2424. C to R. & R. Sept. 12/03. F. C. for in Sol's name. E. W. W.

CLOSE IN CENTER

1447 **Plaintiff's Exhibit No. 13.**

Final Certificate No. 903 Application No. 2424.

Soldiers Additional H. E.

Homestead.

Land Office at Evanston, Wyo.

July 15th, 1903.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of Jno. J. Stockman has made payment in full for Lots 1 and 2 of Section No. 18, in Township No. 20 North, of Range No. 116, of the 6th Principal Meridian West, containing 94 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas J. Sneddon assignee of Jno. J. Stockman shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

As per letter "C" of Sept. 12th, 1903, of the Hon. Commissioner, G. L. O. I hereby certify that the name on this receipt should read John J. Stockman.

CHAS. KINGSTON, Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

As per instructions contained in Hon. Com. letter "C" of Sept. 12th, 1903, I have this day corrected this receipt to read for John J. Stockman instead of Jno. J. Stockman.

CHAS. KINGSTON, Register.

Abs. Final Certificate No. 908. Jno. J. Stockman Homestead Application No. 2424. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. J. O. L. Land Office at Evanston, Wyo. July 15, 1903. Sec. 18, Town. 20 N., Range 116 W. C. to R. & R. Sept. 12/03. E. W. W. Wisconsin Div. Posted Wis. L. L. M. Div. C, List No. 66. Approved Oct. 10, 1903. (J. Vance Lewis adv's) E. W. W., Ex Clerk, Division C, Patented Nov. 10, 1903, Recorded, Vol. 27, page 405.

Transmitted patent Dec. 19, 1903. To Register & Receiver.

U. S. General Land Office. Received Sep. 22, 1903. 159680.

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1448 **Plaintiff's Exhibit No. 17.**

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

47.10
47.01

94.11

No. ..... Land Office,
Evanston, Wyo., May 8, 1899.

I, Daniel F. Harrison of Diamondville, Uinta County, State of Wyoming, the legal assignee of Joseph J. Willson, being entitled to the benefits of Section 2306, R. S. of United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the Lots 3 & 4, Sec. 18 Tp. 20 N. R. 116 W. 6th P. M. as additional to his original homestead on the Lot 6 of NW fract ¼ Sec. 6, Tp. 39 N., R. 6 W., entered at the U. S. Land Office at Boonville, Mo., per homestead No. 8335, dated Mar. 6th, 1871.

DANIEL F. HARRISON,
Assignee of Joseph J. Willson.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above application before me this 8th day of May, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on Lots 3 & 4 Sec. 18 Tp. 20 N .R. 116 W. 6th P. M., that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed May 8th, 1899.

1449 **Plaintiff's Exhibit No. 17.**

State of Wyoming,
County of Uinta.

In U. S. Land Office, Evanston, Wyo.

Daniel F. Harrison being first duly sworn deposes and says: That he is a native born citizen of the United States over 21

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years of age and the identical person who on the 8" day of May, 1899, has applied to make entry under Sec. 2306 of the Revised Statutes of the United States, of the following described land, to-wit: Lots 3 & 4 Sec. 18, Tp. 20 N. R. 116 W., containing 94-17/100 acres in the district of lands subject to sale at Evanston, Wyo., said application being made by affiant as the assignee of the original soldier, to-wit: Joseph J. Wilson, who on the 6 day of Mar., 1871, made Homestead Entry No. 8335 for the Lot 6 Sec. 6, Tp. 39 N. R. 6 W., containing ..... acres, at the United States Land Office at Boonville, Mo.

Affiant further states that on the 20" day of April, 1899, he purchased said soldier's additional right in good faith for a valuable consideration from the legal holder thereof, to-wit, Charles H. Moginnis, to whom the same has been transferred and assigned by Joseph J. Wilson, the aforesaid original soldier, as shown by the affidavit of said soldier and his duly executed assignment thereof to Charles H. Moginnis.

Affiant states that said application to enter is made in good faith, and that he has not heretofore made an additional entry under Section 2306 Revised Statutes of the United States, as additional to said Homestead No. 8335 of said Joseph J. Wilson, and that he, affiant, is the present legal owner and beneficiary of said Joseph J. Wilson soldier's additional homestead right under Section 2306 Revised Statutes of the United States.

DANIEL F. HARRISON.

Subscribed and sworn to before me this 8" day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

1450 Assignment of Soldier's Additional Right.

Under Sec. 2306 R. S. of the United States,

By Assignment of the Original Claimant.

Whereas, Joseph J. Willson, being entitled to make a Soldier's Additional Homestead Entry under Section 2306 of the Revised Statutes of the United States for 109.05 acres of land, which right of additional entry was duly transferred and assigned by Joseph J. Wilson aforesaid, to the undersigned by instrument dated January 6th, 1899, which is herewith attached.

Now, Therefore, the undersigned, for and in consideration of the sum of one dollar and other valuable considerations, to him in hand paid, the receipt whereof is hereby confessed and ac-

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knowledged, the undersigned hereby transfers, assigns, sets over and conveys to Daniel F. Harrison, of the County of Uinta, and State of Wyoming, his heirs and assigns, all of his right and interest in and to the above described Soldier's Additional Homestead Right, under Section 2306 of the Revised Statutes of the United States, with full power and authority to said Daniel F. Harrison, his heirs and assigns, to locate and enter and obtain the benefit of said right upon any public land subject to homestead appropriation; this assignment being made for the express purpose of divesting from the undersigned all of his right as assignee of said Joseph J. Willson the original claimant to make an Additional Hometead Entry upon Section 2306 of the Revised Statute of the United States, and to transfer and convey the same to the exclusive use of Daniel F. Harrison, his heirs and assigns forever.

CHARLES H. MAGINNIS.

Attest:
C. P. Maginnis
R. N. Day

(U. S. 10 ct.)
(Inter. Rev.)
(Stamp.)

State of Minnesota,
County of St. Louis—ss.

On this 29 day of April, A. D. 1899, before me, a notary public, within and for said County, personally appeared Charles H. Maginnis, to me known to be the person described in and who executed the foregoing and within assignment; that he executed the same as his free act and deed.

(Seal)

C. P. MAGINNIS,
Notary Public, St. Louis Co., Minn.

1451 State of Minnesota,
County of St. Louis—ss.

Charles H. Maginnis being duly sworn according to law, deposes and says that he is the person named in the assignment of Joseph J. Willson who is entitled to make Soldier's Additional Homestead Entry of 109.05 acres of public land under the provisions of Section 2306 of the Revised Statutes of the United States, as additional to original homestead entry No. 8335, made Mar. 6th, 1871, at Boonville, Mo., for Lot 6 Sec. 6, Twp. 39 N. R. 6 W. in the name of Joseph Willson; that affiant purchased the said additional homestead right of entry in good faith, for a valuable consideration, and paid for the same; that he was the bona fide holder and owner thereof until the 20 day of April, 1899, when he sold and assigned the same to Daniel F. Harrison of Diamondville, Wyo-

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ming, for a valuable consideration; and that prior to such last mentioned sale and assignment he had not made an entry of public land as such assignee, and that he had not sold or disposed of said right of entry, but that the same remained vested in him unimpaired.

That his post-office address is Duluth, Minnesota.

CHARLES H. MAGINNIS.

Subscribed and sworn to before me on this 20th day of April, 1899.

(Seal)

C. P. MAGINNIS,
Notary Public, St. Louis Co., Minn.

1452 Assignment.

Whereas the undersigned Joseph J. Willson, is entitled to an additional entry of 120 acres of public land under and by virtue of the provisions of section 2306 of the Revised Statutes of the United States, as shown by the accompanying proof, being additional to my original homestead entry of Lot Six (6) of the North-west qr., of Section Six (6), in Township Thirty-nine (39), of Range Six (6) West, in the District of lands subject to sale at Boonville, Missouri, dated March 6th, 1871, and patented December 12th, 1873.

And Whereas he has this day sold said right of entry to Charles H. Maginnis, and has received full payment therefor, the receipt is hereby acknowledged.

Now this Assignment Witnesseth, for value received, I, Joseph J. Willson, do hereby sell, assign and transfer to the said Charles H. Maginnis, of Duluth, Minnesota, and to his heirs and assigns forever, my right to make entry of 120 acres of public land to which I am entitled under the provisions of Section 2306 as aforesaid, and authorize him the said Charles H. Maginnis, his heirs and assigns, to make such entry of public land and receive a patent therefor, this assignment being made for the purpose of divesting the undersigned of his right to make an additional entry of the public land under the provisions of Section 2306 as aforesaid and to vest such right of entry in the said ..... his heirs and assigns forever.

Signed, sealed and delivered this 6th day of January, 1899.

JOSEPH J. WILLSON.

Witnesses:
Wm. Greis,
J. C. Miller.

(U. S. 10 ct.)
(Inter. Rev.)
(Stamp.)

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State of Missouri,
County of Osage—ss.

On this 6th day of Jany., 1899, before me personally appeared Joseph J. Willson, to me well known as the person who executed the foregoing assignment and the accompanying proof, and acknowledged the foregoing assignment to be his act and deed for the purposes therein named.

(Seal) C. R. MARGUAND,
Notary Public.

My commission expires May 28, 1899.

1453 Additional Homestead Proof.

I, Joseph J. Willson, of St. Auberts, Osage County, State of Missouri, do solemnly swear that I am the identical person who was mustered into the Military service of the United States under the name of Joseph J. Willson, a Private in Company H., Vet. Regiment (Merrell's Horrse) Missouri Volunteers, on the 25th day of April, 1864, and that I have remained loyal to the Government.

I furthermore solemnly swear that I am the identical person who made original Homestead entry No. 8335, at the United States Land Office at Boonville, Missouri, dated March 6th, 1871, under the name of Joseph Willson, of Lot numbered six (6) of the North-west qr., of section Six (6), in Township Thirty-nine, North, Range Six (6) West, containing 50.95 acres, and that the same was duly patented to me December 20th, 1873. That on the 18th day of August 1896, I made Soldiers Additional entry No. 16,689, at said Boonville, Missouri Land Office, for the North-west of the North east qr., of section 28 in Tp. 45 of R. 20, and East half of lots one and two of North-West qr., of section three (3) Tp. 63 R. 24 of 121.17 acres, which said entry was suspended December 3d, 1896, and subsequently cancelled for non-contiguity of said land thus located: that I have not made any other homestead entry, either under the provisions of Section 2306 Revised Statutes, or any other Act of Congress, and that I have not made any prior application (than as above stated) for any additional homestead entry under the provisions of Section 2306 of the Revised Statutes of the United States, nor has a certificate of right of entry been issued to me; that I have not heretofore disposed in any manner of my right of entry granted by said Section 2306, and that I have this day sold and assigned my said right of entry to

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Charles H. Maginnis of Duluth, Minnesota, his heirs and assigns, in accordance with an assignment hereto attached.

My post office address is St. Auberts, Osage Co., Mo.

JOSEPH J. WILLSON.

Attest:
1. Wm. Greis.
2. J. C. Miller.

State of Missouri,
County of Osage—ss.

Subscribed and sworn to before me this 6th day of January, A. D. 1899.

(Seal) C. R. MARGUAND,
Notary Public.

My commission expires May 28, 1899.

The undersigned do solemnly swear that we have been well acquainted with said Joseph J. Willson, who made the above affidavit, for about Twelve and fifteen years last past respectively years; and that we have reason to know that his statements in said affidavit are true. That our P. O. address is Chamois, Mo.

J. C. MILLER,
WM. GREIS.

Osage County,
State of Missouri.

Subscribed and sworn to before me this Jan. 6", 1899.

(Seal) C. R. MANGUAND,
Notary Public.

My commission expires May 28, 1899.

1454 To All Whom it May Concern:

Know Ye, That Joseph J. Willson, a Private of Captain Geo. H. Rowell, Company (H.) Veteran Regiment of Merrills Horse Volunteers, who was enrolled on the 25th day of April, one thousand eight hundred and Sixty-four to serve three years or during the war, is hereby Discharged from the service of the United States this Nineteenth day of September, 1865, at Nashville, Tenn., by reason of being mustered out in accordance with S. O. #63, Dept. Term. dated Sept. 6, 1865. (No objection to his being re-enlisted is known to exist.)

Said Joseph J. Willson was born in Geneveive in the State of Missouri, is twenty-four years of age, five feet eleven inches

high, fair complexion, hazel eyes, sandy hair, and by occupation, when enrolled a farmer.

Given at Nashville, Tenn., this Nineteenth day of September, 1865.

J. W. CLEDE,
Capt. & A. C. M. 2d Div. 4 A. C.

GEO. H. ROWELL,
Capt. Merrills Horse,
Comdg. Co. H.

. Paid Sept. 23, 1865.

G. F. CARPENTER, P. M. U. S. A.

Boonville, Missouri, Jan. 9th, 1899.

I, R. W. Whitlow, do hereby certify that the foregoing copy of the Discharge of Joseph J. Willson, has been carefully copies and compared, and is a correct copy of the original.

Witness my hand the day and year above written.

(Seal)

R. W. WHITLOW,
Notary Public,
Cooper Co., Mo.

1455 Soldiers Additional. 109-05/100 Acres. Joseph J. Willson, Soldier. Original Entry No. 8335, for Lot 6 of N. W. fract ¼ Sec. 6, Tp. 39 N. R. 6 W. at Boonville, Mo. Land Office. ..... Assignee. U. S. Land Office. Filed May 8, 1899. Charles Kingston, Reg., Evanston, Wyo. C. P. and C. H. Maginnis, Attorneys, Duluth, Minnesota.

1456 Plaintiff's Exhibit No. 18.
Application No. 1933.

Final Receiver's Receipt No. 719.

Homestead.

Receiver's Office, Evanston, Wyo.

Nov. 2d, 1900.

Received of Daniel F. Harrison, assignee of Joseph J. Willson the sum of Seven dollars and & Six cents, being the balance of payment required by law for the entry of Lots 3 & 4 of Section 18, in Township 20 N., of Range 116 W., containing 94 & 17/100 acres, under Section 2291 of the Revised Statutes of the United States.

$7.06

FRANK M. FOOTE,
Receiver.

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$3.88 Testimony fee received. Number of written words, 1725, Rate per 100 words, 22½ cents.

Soldiers Additional Homestead.

1457 Plaintiff's Exhibit No. 19.

Final Certificate No. 719 Application No. 1933.

Homestead.

Land Office at Evanston, Wyoming, Nov. 2, 1900.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of Joseph J. Willson has made payment in full for Lots 3 and 4 of Section No. 18, in Township No. 20 N., of Range No. 116 W., of the 6th Principal Meridian, containing 94.17/100 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldiers Additional Homestead.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Test. fee. Mo. 2. Willson. Final Certificate No. 719. Homestead Application No. 1933. Mo. 8385 Boonville. Land Office at Evanston, Wyoming. Nov. 2, 1900. Sec. 18, Town. 20 N., Range 116 W. Mo. Noted on Mo. Tract Book, M. E. M. May 31/01, To R. & R. J. W. A. Danl. F. Harrison, assignee Joseph J. Wilson. Approved May 20, 1901. J. W. A., Ex. Clerk, Division C, Patented July 9", 1901. Recorded, Vol. 23, page 419.

Patent transmitted Aug. 6, 1901 To Register & Receiver.

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1458 Plaintiff's Exhibit No. 25.

Additional Entry.

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. 1993. Land Office,

F. H. E. 747 Evanston, Wyo., May 1, 1899. 187 .

I, Thomas Sneddon of Diamondville, Uinta County, State of Wyoming, assignee of William E. Swihart, being entitled to the benefits of Section 2306, of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the E ½ SW ¼ Sec. 18, Top. 20, N. R. 116 W. 6″ P. M. as additional to his original homestead on the N 2 SW 4 Sec. 28 Tp. 18 N. R. 11 E. Neb., which he entered at Omaha, Neb., 1867 per homestead No. 1672.

THOMAS SNEDDON,
Assignee of William E. Swihart.

Land Office, Evanston, Wyo., May 1st, 1899.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1459 Plaintiff's Exhibit No. 26.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo., May 1, 1899.

Thomas Sneddon, assignee of William E. Swihart, being duly sworn according to law, deposes and says that he is the identical person mentioned as such assignee who is an applicant for Government title to the E 2 SW 4 Sec. 18 Top. 20 N. R.

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116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON,
Assignee of William E. Swihart.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this first day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of

not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Thomas Sneddon, assignee of William E. Swihart.

U. S. Land Office. Filed May 1, 2 p. m., 1899. Charles Kingston, Reg., Evanston, Wyo.

1460 Plaintiff's Exhibit No. 27.

Final Receiver's Receipt No. 747.
Application No. 1993.

Homestead.

Receiver's Office, Evanston, Wyo.

Jany. 19th, 1901.

Received of Thomas Sneddon, assignee of William E. Swihart the sum of Six dollars and .... cents, being the balance of payment required by law for the entry of the E 2 SW 4 of Section 18, in Township 20 N., of Range 116 W., containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK H. FOOTE,
Receiver.

$2.49 Testimony fee received. Number of written words, 1108, Rate per 100 words, 22½ cents.

Soldiers Additional Homestead.

F. C. No. 747. Evanston, Wyo., January 19, 1901. To R. & R. May 22, 1901, as to erroneous collection of testimony fee. J. C.

1461 Plaintiff's Exhibit No. 28.

Final Certificate No. 747. Application No. 1993.

Homestead.

Land Office at Evanston, Wyo.

Jan. 19, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2306, Revised Statutes of the United States, Thomas Sneddon, assignee of William E. Swihart has made

payment in full for E ½ SW ¼ of Section No. 18, in Township No. 20 N., of Range No. 116 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON, Register.

Corrected by order of Hon. Com. letter "C" May 23rd, 1901, so as to read Tp. 20.

CHAS. KINGSTON, Register.

Addl. under Sec. 2306 R. S., to original H. E. No. 1672 (F. C. No. 1415.)

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Soldiers Additional. Noted Abt. Final Certificate No. 747. Homestead Application No. 1993. Noted on Nebr. T. B. Mch. 28, 1901. C. S. M. Land Office at Evanston, Wyo. Jan. 19, 1901. Sec. 18, Town. 20 N., Range 116 W. Nebr. Attys. advised June 10, 1901. J. C. Advise J. Vance Lewis. Advise Burdett, Thompson & Law. 152566-1900. Div. C, List No. 23. Approved June 8, 1901. Jacob Coller, Ex. Clerk, Division C, Patented July 9", 1901. Recorded, Vol. 23, page 430.

Patent transmitted Aug. 6, 1901. To Register & Receiver.

1462 Plaintiff's Exhibit No. 33.

Additional Entry.

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. 2016 Land Office,

(751) Evanston, Wyo., May 1, 1899. 187 .

I, Thomas Sneddon, of Diamondville, Uinta County, State of Wyoming, assignee of Thomas Patterson, being entitled to the benefits of Section 2306, of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 NE 4 & NE 4 NW 4 Sec. 18 Top. 20 N. R. 116 W. 6" P. M. as additional to his original homestead on the NW

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4 NE 4 Sec. 18, T. 10 N. R. 6 W Mich., which I entered at Ionia, Mich., Jan. 18, 1864, per homestead No. 929.

THOMAS SNEDDON,
Assignee of Thomas Patterson.

Land Office, Evanston, Wyo., Feby. 26, 1901.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1463 Plaintiff's Exhibit No. 34.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.
May 1, 1899.

Thomas Sneddon, assignee of Thomas Patterson, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the N 2 NE 4 & NE 4 NW 4 Sec. 18 Top. 20 N. R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land,

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but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON,
Assignee of Thomas Patterson.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this first day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Thomas Sneddon assignee of Thomas Patterson.

U. S. Land Office. Filed May 1, 2 P. M., 1899. Charles Kingston, Reg., Evanston, Wyo.

1464 Plaintiff's Exhibit No. 35.

Final Receiver's Receipt No. 757.
Application No. 2016.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 26th, 1901.

Received of Thomas Sneddon, assignee of Thomas Patterson the sum of Nine dollars and ..... cents, being the balance of payment required by law for the entry of the N 2 NE 4 & the NE 4 NW 4 of Section 18, in Township 20 N., of Range 116 W., containing 120 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$1.48 Testimony fee received. Number of written words, 656, Rate per 100 words, 22½ cents.

Soldiers Additional Homestead.

1465 Plaintiff's Exhibit No. 36.

Final Certificate No. 757. Application No. 2016.

Homestead.

Land Office at Evanston, Wyo.
Feby. 26, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States. Thomas Sneddon, assignee of Thomas Patterson has made payment in full for N ½ NE ¼ & NE ¼ NW ¼ of Section No. 18, in Township No. 20 N., of Range No. 116 W., of the 6th Principal Meridian, containing 120 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Sol. Additional. Noted on Mich. T. B. July 31/01, Vol. 14/30 E. H. H. Final Certificate No. 757. Homestead Application No. 2016. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted T. B. Land

Office at Evanston, Wyo., Feby. 26, 1901. Sec. 18, Town. 20 N., Range 116 W. 152568/1900 appearance Burdett, Thompson & Law. Advise J. Vance Lewis. Attys. advised Aug. 19, 1901. J. C. Div. C, List No. 33. Approved Aug. 15, 1901. J. Coller, Clerk Ex. Division C. Patented Aug. 29, 1901. Recorded Vol. 14, page 494.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1466 Plaintiff's Exhibit No. 41.

Additional Entry.

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. 2060 Land Office, Evanston, Wyo.
May 1, 1899. 187 .

I, Thomas Sneddon of Diamondville, Uinta County, State of Wyoming, assignee of William Arthurs, being entitled to the benefits of Section 2306, of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S 2 NE 4 & SE 4 NW 4 Sec. 18, Twp. 20 N. R. 116 W—6th P. M. as additional to his original homestead on the SW 4 SE 4 Sec 18 T 25 N R 13 W. Wisconsin which he entered at Falls of St. Croix Feb. 11, 1863, per homestead No. 51.

THOMAS SNEDDON,
Assignee of William Arthurs.

Land Office, Evanston, Wyo., May 9, 1901.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1467 Plaintiff's Exhibit No. 42.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

COPY BOUND CLOS

United States Land Office,

Evanston, Wyo.
May 1, 1899.

Thomas Sneddon assignee of William Arthurs, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the S 2 NE 4 & SE 4 NW 4 Sec. 18 Twp. 20 N. R. 116 W—6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON,
Assignee of William Arthurs.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this first day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

CLOSE IN CENTER

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Thomas Sneddon, Assignee of William Arthurs.
U. S. Land Office. Filed May 1, 2 pm, 1899. Charles Kingston, Reg., Evanston, Wyo. 1899-56541-1.

1468 Plaintiff's Exhibit No. 43.

Final Receiver's Receipt No. 775.
Application No. 2060.

Homestead.

Receiver's Office, Evanston, Wyo.
May 9th, 1901.

Received of Thomas Sneddon, assignee of William Arthurs the sum of Nine dollars ..... cents, being the balance of payment required by law for the entry of the S 2 NE 4 and the SE 4 NW 4 of Section 13 in Township 20 N. of Range 116 W. containing 120 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$.... Testimony fee received. Number of written words, ... Rate per 100 words .... cents.

Soldiers Additional Homestead.

1469 Plaintiff's Exhibit No. 44.

Final Certificate No. 775. Application No. 2060.

Homestead.

Land Office at Evanston, Wyo.
May 9th, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2306, Revised Statutes of the United States,

Thomas Sneddon, assigned of William Arthurs has made payment in full for S ½ NE ¼ & SE ¼ NW ¼ of Section No. 18, in Township No. 20 N., of Range No. 116 W., of the 6 Principal Meridian, containing 120 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Posted in Wis. Vol. 1 St. Croix Pg 171 GWH C Sol. Additional. Final Certificate No. 775. Homestead Application No. 2060. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted T. B. Land Office at Evanston, Wyo., May 9th, 1901. Sec. 18, Town. 20 N, Range 116 W. 49161/1901 appearance Burdett, Thompson & Law. J. C. (Falls of St. Croix, Wis.) Advise J. Vance Lewis Attys. advised Aug. 19, 1901. J. C. No. Conflict. Div. C, List No. 33. Approved Aug. 15, 1901. Ex. J. Coller, Clerk, Division C, Patented Aug. 29, 1901. Recorded, Vol. 14, page 498.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1470 Plaintiff's Exhibit No. 49.

Additional Entry.

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. 2061. Land Office,
Evanston, Wyo., May 1, 1899. 187 .

I, Thomas Sneddon of Diamondville, Uinta County, State of Wyoming, assignee of Eugene Stebbins, being entitled to the benefits of Section 2306, of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter N 2 SE 4 Sec 18 Twp 20 N R 116 W 6" P M as additional to his original homestead on the W 2 NW 4 Sec 8 T 25 N R 14 W Wis. which I entered at La Crosse, Wis., 18.., per homestead No. 665.

THOMAS SNEDDON,
Assignee of Eugene Stebbins.

Land Office, Evanston, Wyo., May 9, 1901.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1471 Plaintiff's Exhibit No. 50.

Affidavit of Assignee.

United States Land Office at Evanston, Wyo.

May 1, 1899 189 .

Thomas Sneddon being duly sworn according to law, deposes and says that he is the person named in the accompanying assignment of J. Vance Lewis, assignee of Eugene Stebbins, the original beneficiary, who is entitled to make Soldier's Additional Entry of 80 acres of public land under the provisions of Section 2,306 of the Revised Statutes of the United States, as additional to his original homestead entry of the W 2 NW 4, Section 8, Town 25 N., Range 14 W. Wisconsin that he purchased the same in good faith, and is now the holder and owner thereof; that he has not made an entry of public land as such assignee, and that he has not sold or disposed of said right of entry, but that the same is vested in him unimpaired; that as such assignee he files herewith his application to enter 80 acres, under the provisions of said Section 2,306, R. S., U. S., and presents herewith the said assignments in writing of the said J. Vance Lewis and Eugene Stebbins, together with proof of the right of entry granted to the said Eugene Stebbins, under the provisions of said Section 2,306.

THOMAS SNEDDON,
Assignee of Eugene Stebbins.

Subscribed and sworn to before me this 1st day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

1472 Plaintiff's Exhibit No. 51.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyoming.
April 2nd, 1901.

Thomas Sneddon, Assignee of Eugene Stebbins, being duly sworn according to law, deposes and says that he is the identical person who as assignee is an applicant for Government title to the N ½ SE ¼, Sec. 18, Tp. 20 N. R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyoming.

THOMAS SNEDDON,
Assignee of Eugene Stebbins.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, within the Evanston, Wyo. land district on this 2nd day of April, 1901.

CHAS. KINGSTON,
Register.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1473 Plaintiff's Exhibit No. 52.

Final Receiver's Receipt No. 776.

Application No. 2061.

Homestead.

Receiver's Office, Evanston, Wyo.
May 9th, 1901.

Received of Thomas Sneddon, assignee of Eugene Stebbins the sum of Six dollars .... cents, being the balance of payment required by law for the entry of the N 2 SE 4 of Section 18 in Township 20 N. of Range 116 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00

FRANK M. FOOTE,
Receiver.

$..... Testimony fee received. Number of written words, ... Rate per 100 words ..... cents.

Soldiers Additional Homestead.

1474 Plaintiff's Exhibit No. 53.

Final Certificate No. 776. Application No. 2061.

Homestead.

Land Office at Evanston, Wyo.,
May 9th, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2306, Revised Statutes of the United States, Thomas Sneddon, assignee of Eugene Stebbins, has made payment in full for N ½ SE ¼ of Section No. 18, in Township No. 20 N., of Range No. 116 W., of the 6th Principal Meridian, containing 80 acres.

COPY BOUND CLOS

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Posted in Wis. Vol 2 St. Croix Pg 114 GWH C. Sol. Additional. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 776. Homestead Application No. 2061. Noted T. B. Land Office at Evanston, Wyo., May 9, 1901. Sec. 18, Town. 20 N., Range 116 W. 49163/1901 appearance, Burdett, Thompson & Law (La Crosse Wis.) Advise J. Vance Lewis. Attys. Advised Aug. 19, 1901. J. C. Div. C, List No. 33. Approved Aug. 15, 1901, Ex. J. Coller, Clerk. Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 499.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1475 Plaintiff's Exhibit No. 58.

Additional Entry.

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. 1988 Land Office,
Evanston, Wyo., May 1, 1899. 187 .

I, Thomas Sneddon of Diamondville, Uinta County, State of Wyoming, assignee of Samuel Benjamin, being entitled to the benefits of Section 2306 of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the South half of the South East quarter of Sec. 18 Twp 20 N R 116 W—6 P. M. as additional to his original homestead on the S 2 NE 4 Sec 6 Tp 96 R 30 Iowa which he entered at Ft. Dodge Ia June 23, 1869, per homestead No. 2289.

THOMAS SNEDDON,
Assignee of Samuel Benjamin.

Land Office Evanston, Wyo., May 1st, 1899.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the

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above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1476 Plaintiff's Exhibit No. 59.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.
May 1, 1899.

Thomas Sneddon, assignee of Samuel Benjamin, being duly sworn according to law, deposes and says that he is the identical person mentioned as such assignee who is an applicant for Government title to the S 2 SE 4 Sec. 18, Twp. 20 N. R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON,
Assignee of Samuel Benjamin.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents

himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this First day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Thomas Sneddon, Assignee of Samuel Benjamin.

U. S. Land Office. Filed May 1, 2 p. m., 1899. Charles Kingston, Reg., Evanston, Wyo. 1899-56540-1.

1477 Plaintiff's Exhibit No. 60.

Final Receiver's Receipt No. 744.
Application No. 1988.

Homestead.

Receiver's Office, Evanston, Wyo.
Jany. 1st, 1901.

Received of Thomas Sneddon, assignee of Samuel Benjamin the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the ¼ E 2 SE 4 of Section 13 in Township 20 N. of Range 116 W. containing Eighty acres, under Section 2291 of the Revised Statutes of the United States.

$6.00

FRANK M. FOOTE,
Receiver.

$2.84 Testimony fee received. Number of written words, 1262, Rate per 100 words 22½ cents.

#S 2 SE 4.

Soldiers Additional Homestead.

F. C. 744. Evanston, Wyoming. R & R atty. May 27, 1901 June 1 C. J. O.

1478 Plaintiff's Exhibit No. 61.

Final Certificate No. 744. Application No. 1988.

Homestead.

Land Office at Evanston, Wyo.,
Jan. 1st, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of Samuel Benjamin has made payment in full for #E ½ SE ¼ of Section No. 18, in Township No. 20 N., of Range No. 116 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Corrected by order of Hon. Com. letter "C" May 27 so as to read S ½.

CHAS. KINGSTON, Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Noted. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted on Iowa tract book Mar. 28/01. W D rept. 70230-99 Vol 82 p 146 EHH. Final Certificate No. 744. Homestead Application No. 1988. Notify Burdette, Thompson & Law also J. Vance Lewis, Takoma D. C. See assgm't 152572/1900. Land Office at Evanston, Wyo. Jan. 1-1901, Sec. 18, Town. 20 N., Range 116 W. Iowa. To Attys. June 15, 1901. C. J. S. Div. C, List No. 24. Ia. Approved June 11, 1901. C. J. S., Ex Clerk, Division C, Patented July 15, 1901, Recorded, Vol. 31, page 491.

Payment transmitted, Jul. 19, 1901. To Register & Receiver.

1479 Plaintiff's Exhibit No. 66.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 2106 Land Office,

FHE 790 Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of George G. Gallaher, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the W 2 NW 4 Sec. 20 Tp. 20 N R. 116 W. 6th P. M. as additional to his original homestead on the N 2 SW 4 Sec. 5, Tp. 29, R. 18, entered at the U. S. Land Office at Springfield, Mo., per homestead No. 3069, dated Mch. 21, 1866.

THOMAS SNEDDON,
Assignee of George G. Gallaher.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the W ½ NW ¼ Sec. 20, Tp. 20 N. R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1480 Plaintiff's Exhibit No. 67.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only

before the officer takeing the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.,
June 17, 1899.

Thomas Sneddon, assignee of George G. Gallaher, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the W 2 NW 4 Sec 20 Tp 20 N. R. 116 W. 6″ P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto: that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo. land district, on this 17″ day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1481 Plaintiff's Exhibit No. 68.

Final Receiver's Receipt No. 790.
Application No. 2106.

Homestead.

Receiver's Office, Evanston, Wyo.
July 1st, 1901.

Received of Thomas Sneddon, assignee George G. Gallaher the sum of Six dollars .... cents, being the balance of payment required by law for the entry of the W 2 NW 4 of Section 20 in Township 20 N of Range 116 W containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$11.00 FRANK M. FOOTE,
Receiver.

$..... Testimony fee received. Number of written words, ... Rate per 100 words ..... cents.

Soldiers Additional Homestead.

F. C. No. 790. Evanston, Wyo. July 1, 1901. R. & R. Aug. 22, 1902 returning Cert. for correction. J. C.

1482 Plaintiff's Exhibit No. 69.

Additional Entry under Section 2306 of the Revised Statutes of the United States.

Certificate.

Land Office, Evanston, Wyo.
July 1st, 1901.

Final Certificate No. 790 Application No. 2106

It is hereby Certified that, pursuant to the provisions of Section 2306 of the Revised Statutes of the United States, Thomas Sneddon, assignee of George G. Gallaher has paid the fee and commissions, and made entry of the W ½ NW ¼ of section 20, of township 20 N., of range 116 W. 6th P. M. containing 80 acres, which added to the quantity embraced in his original homestead No. 3069, on which he has made final proof, as per certificate No. ....., does not exceed one hundred and sixty acres.

Now, Therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Corrected by order of Hon. Com. letter "C" of Aug. 22, 1902, so as to show proper meridian, viz. 6th P. M.

CHAS. KINGSTON, Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

J. C. Evanston Soldiers Addl. F. C. 790. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. H. E. 2106. Sol. Add. Hd. Noted. Evanston, Wyoming. July 1, 1901. No conflict. W 2 NW 19-20 N. 116 W. Noted on Mo. T. B. Vol. 10/202. M. E. M. Div. C, List No. 45. Approved Nov. 8, 1902. Ex. J. Coller. Div. C. Pat. Dec. 17, 1902. Rec. Vol. 30 page 262.

File with 4801 in your files.

Patent transmitted, Jan. 5, 1903. To Register & Receiver.

1483 Plaintiff's Exhibit No. 74.

78817-1899 W. D. C.

"C" Department of the Interior, J. V. W.

G. J. D. General Land Office, E. A.H.

A. F. D. Washington, D. C., Oct. 30, 1900 A. Y.

Address only the
Commissioner of the General Land Office.

Thomas Sneddon, assignee of Frederick Valenstine.

Soldier's additional homestead application allowed.

Register and Receiver,
Evanston, Wyoming.

Gentlemen:—

On June 22, 1899, you forwarded the application of Thomas Sneddon, assignee of Frederick Valenstine, to make soldier's additional homestead entry for the W ½ SW ¼ Sec. 20, T. 20 N., R. 116 W., 6th. P. M., containing eighty acres as additional to homestead entry No. 952 made by said Valenstine at Boonville, Missouri, on July 6, 1865, for the N ½ NE ¼ Sec. 13, T. 33 N., R. 17 W., containing eighty acres, which entry was canceled December 21, 1867, for abandonment.

The following evidence is filed in support of said application.

An assignment from Frederick Valenstine to Charles H. Maginnis, of Duluth, Minnesota, dated March 28, 1899, with an affidavit by Valenstine in which he alleges that he is the identical person who was mustered into the military service of the United States under the name of Frederick Valenstine in Co. "H" 8th Regt. Mo. Cav. Vols., on August 9, 1862, and honorable discharged therefrom May 9, 1865, and who made homestead entry No. 952, as described above; that he has
1484 not made any other homestead entry, either under the provisions of Section 2306, R. S., or under any other Act of Congress, and that he has not made any prior application for an additional homestead entry under the provisions of Section 2306 R. S. U. S., nor has a certificate of right of entry been issued to him, and that he has not heretofore disposed in any manner of his right of entry granted by said Section 2306; that his post office address is Phillipsburg, Missouri.

An affidavit by two witnesses whose post office addresses are given, who swear that they have been personally acquainted with said Frederick Valenstine since 1858, and know that he is the party who performed the alleged military service and made said homestead entry No. 952 at Boonville, Missouri.

An assignment from Charles H. Maginnis to Thomas Sneddon, dated May 23, 1899, with the assignor's affidavit that he purchased said right in good faith for a valuable consideration; that he has not made an entry of public land as such assignee; that he has not disposed of said right of entry, but that the same remains vested in him unimpaired.

An affidavit by Thomas Sneddon in which he alleges that he is a naturalized citizen of the United States, record evidence of his naturalization being furnished; that he purchased said right in good faith, for a valuable consideration, and that he is now the present legal owner and beneficiary of said right.

A non-mineral affidavit made by the applicant before your office and a copy of the military discharge of Valenstine, which shows that he was enrolled and mustered out as alleged.

The alleged military service of Valenstine has been verified from the records of the War Department.

The signatures of Valenstine to his original homestead application and to his assignment are made by mark.

The records of this office show that the tract applied for is vacant government land, subject to homestead entry; that
1485 Valenstine made original homestead entry as alleged, and do not show that he made any other homestead entry, or that said right has ever been certified to him, and that the same was canceled by reason of abandonment December 21, 1867.

It appears that Frederick Valenstine was entitled to an additional homestead right for eighty acres under Section 2306 R. S., and that said right has been transferred by due process, for value, from him to Thomas Sneddon, who appears to be entitled to locate the same on the land applied for.

By letter of "C" of January 30, 1900, the soldier was notified of said application, and was allowed fifteen days within which to show cause why the same should not be allowed. No reply has been received from him to said notice.

Said application, with its accompanying papers, is herewith returned, with direction that upon payment of the legal fee and commissions you will allow the entry to go of record in the name of Thomas Sneddon, assignee of Frederick Valenstine, and issue final receipt and certificate.

Serve notice and make report under circular of March 1, 1900, (29 L. D., 649).

Very respectfully,

BINGER HERMAN,
Commissioner.

C. D.

1486 Plaintiff's Exhibit No. 79.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 1992 Land Office,
F H E 746 Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of John Fessler, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Re-

bellion, do hereby apply to enter the SE 4 NW 4; NE 4 SW 4 Sec. 20 Tp. 20 N. R. 116 W-6″ P. M. as additional to his original homestead on the 80 acres in Sec. 20, Tp. 126 N., R. 31 W., entered at the U. S. Land Office at St. Cloud, Minn., per homestead No. 7622, dated June 18, 1872.

THOMAS SNEDDON,
Assignee of John Fessler.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the SE ¼ NW ¼ & NE ¼ SW ¼, Sec. 20, Tp. 20 N. R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1487 Plaintiff's Exhibit No. 80.

State of Wyoming,
County of Uinta.

In U. S. Land Office, Evanston, Wyo.

Thomas Sneddon being first duly sworn deposes and says: That he is a naturalized citizen of the United States over 21 years of age and the identical person who on the 17 day of June, 1899, has applied to make entry under Sec. 2306 of the Revised Statutes of the United States, of the following described land, to-wit: SE 4 NW 4 & NE 4 SW 4 Sec. 20, Tp. 20 N., R. 116 W., containing 80 acres in the district of lands subject to sale at Evanston, Wyo., said application being made by affiant as the assignee of the original soldier, to-wit: John Fessler, who on the 18″ day of June, 1872, made Homestead Entry No. 7622 for the 80 acres in Sec. 20, Tp. 126 N., R. 31 W., containing 80 acres, at the United States Land Office at St. Cloud, Minn.

Affiant further states that on the 14″ day of April, 1899, he purchased said soldier's additional right in good faith for a valuable consideration from the legal holder thereof, to-wit,

George W. Arnold, Jr., to whom the same has been transferred and assigned by John Fessler the aforesaid original soldier, as shown by the affidavit of said soldier and his duly executed assignment thereof to George W. Arnold, Jr.

Affiant states that said application to enter is made in good faith, and that he has not heretofore made an additional entry under Section 2306 Revised Statutes of the United States, as additional to said Homestead No. 7622 of said John Fessler, and that he, affiant, is the present legal owner and beneficiary of said John Fessler soldier's additional homestead right under Section 2306 Revised Statutes of the United States.

THOMAS SNEDDON.

Subscribed and sworn to before me this 17 day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

1488 Plaintiff's Exhibit No. 81.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.
Jun. 17, 1899.

Thomas Sneddon, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the SE 4 NW 4 & NE 4 SW 4 Sec. 20 Tp. 20 N. R. 116 W-6″ P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral

during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo. land district, on this 17" day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1489 Plaintiff's Exhibit No. 82.

Final Receiver's Receipt No. 746.

Application No. 1992.

Homestead.

Receiver's Office, Evanston, Wyo.

Jany. 19th, 1901.

Received of Thomas Sneddon, assignee of John Fessler the sum of Six dollars .... cents, being the balance of payment

required by law for the entry of the SE 4 NW 4 & the NE 4 SW 4 of Section 20 in Township 20 N. of Range 116 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00

FRANK M. FOOTE,
Receiver.

$3.43 Testimony fee received. Number of written words, 1522, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1490 Plaintiff's Exhibit No. 83.

Final Certificate No. 746. Application No. 1992.

Homestead.

Land Office at Evanston, Wyo.,
Jan. 19, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of John Fessler has made payment in full for SE ¼ NW ¼ NE ¼ SW ¼ of Section No. 20, in Township No. 20 N., of Range No. 116 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Additional to H. E. 7622, St. Cloud, Minn.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 746. Homestead Application No. 1992. Noted on Minn. Records Mch. 28/01. MPW. Land Office at Evanston, Wyo., Jan. 19, 1901. Sec. 20, Town. 20 N., Range 116 W Minn. Div. C, List No. 20. Approved May 18, 1901. N. F. F., Ex. Clerk, Division C, Patented July 9, 1901. Recorded, Vol. 23, page 428.

Patent transmitted, Aug. 6, 1901. To Register & Receiver.

1491

Plaintiff's Exhibit No. 88.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

Lot 1-45.95
" 2-45.85

91.80
86.64

5.16

No. 2003
754

Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of William B. Peters, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the Lots 1 & 2 Sec. 30 Tp. 20 N. R. 116 W. 6th P. M. as additional to his original homestead on the SE 4 SE 4 & Lot 1 Sec. 30, Tp. 119, R. 32, entered at the U. S. Land Office at Minneapolis, Minn., per homestead No. 1450, dated April 7, 1865.

THOMAS SNEDDON,
Assignee of William B. Peters.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on lots 1 & 2 Sec. 30, Tp. 20 N., R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1492 Plaintiff's Exhibit No. 89.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.,
Jun. 17, 1899.

Thomas Sneddon, assignee of William B. Peters, being duly sworn according to law, deposes and says that he is the identical person named as such assignee & who is an applicant for Government title to the Lots 1 & 2, Sec. 30, Twp. 20 N. R. 116 W., 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo. land district, on this 17 day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1493 Plaintiff's Exhibit No. 90.

Final Receiver's Receipt No. 754.

Application No. 2003.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 4th, 1901.

Received of Thomas Sneddon, assignee of William B. Peters the sum of Six dollars & fifty cents, being the balance of payment required by law for the entry of Lots 1 & 2 of Section 30 in Township 20 N. of Range 116 W. containing 91.80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.50

FRANK M. FOOTE,
Receiver.

$2.25 Testimony fee received. Number of written words, 1000, Rate per 100 words 22½ cents.

1494 Plaintiff's Exhibit No. 91.

Final Certificate No. 754. Application No. 2003.

Homestead.

Land Office at Evanston, Wyo.,
Feb. 4, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States,

Thomas Sneddon, Ass. of William B. Peters, has made payment in full for Lots 1 & 2 of Section No. 30, in Township No. 20 N., of Range No. 116 W., of the 6 Principal Meridian, containing 91.80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Sol. Additional. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted T. B. Final Certificate No. 754. Homestead Application No. 2003. Noted on Minn. Records. M. P. W. Land Office at Evanston, Wyo. Feb. 4, 1901. Sec. 30, Town. 20 N., Range 116 W. (Minneapolis, Minn.) Div. C, List No. 33. Approved Aug. 15, 1901. Jacob Coller, Ex. Clerk, Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 493.

Patent transmitted. Sep. 25, 1901. To Register & Receiver.

1495 Plaintiff's Exhibit No. 104.

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. 2017 Land Office,
(758) Evanston, Wyo., May 8, 1899.

I, Daniel F. Harrison of Uinta County, State of Wyoming, the legal assignee of John B. F. Havens, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 NE 4 & NE 4 NW 4 Sec. 30 Tp. 20 N. R. 116 W-6th P. M. as additional to his original homestead on the 40 acres in Sec. 22, Tp. 116 N., R. 30 W. Minn., entered at the U. S. Land Office at ..... per homestead No. 3439, dated Sep. 16, 1868.

DANIEL F. HARRISON,
Assignee of John B. F. Havens.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above

application before me this 8th day of May, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on the N 2 SE ¼ & NE 4 NW 4 Sec. 30 Tp. 20 N. R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed May 8th, 1899.

1496 Plaintiff's Exhibit No. 105.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.,
May 8, 1899.

Daniel F. Harrison, being duly sworn according to law, deposes and says that he is the identical person named as assignee of John B. F. Haven who is an applicant for Government title to the N 2 NE 4 & NE 4 NW 4 Sec. 30 Twp. 20 N. R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year

by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 8" day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec 1750.)

1497 Plaintiff's Exhibit No. 106.

Final Receiver's Receipt No. 758.

Application No. 2017.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 26th, 1901.

Received of Daniel F. Harrison, assignee of John R Havens the sum of Nine dollars .... cents, being the balance

of payment required by law for the entry of the N 2 NE 4 & the NE 4 NW 4 of Section 30 in Township 20 N. of Range 116 W. containing 120 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$3.14 Testimony fee received. Number of written words, 1397, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1498 Plaintiff's Exhibit No. 107.

Final Certificate No. 758. Application No. 2017.

Homestead.

Land Office at Evanston, Wyo.,
Feby. 26, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of John B. F. Havens has made payment in full for N ½ NE ¼ & the NE ¼ NW ¼ of Section No. 30, in Township No. 20 N, of Range No. 116 W., of the 6th Principal Meridian, containing 120 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldier's name is John B. F. Haven.

J. C.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Sol. Additional. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 758. Homestead Application No. 2017. Noted on Minn. Records. M. P. W. Noted T. B. Land Office at Evanston, Wyo. Feby. 26, 1901. Sec. 30, Town. 20 N., Range 116 W. (S. 22 T 116. R. 30 Minn.) 4 B. Div. C, List No. 33. Ex. Approved Aug. 14, 1901. J. Coller, Clerk, Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 495.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1499 Plaintiff's Exhibit No. 112.

Additional Entry. 1139

Under Section 2306 of the R. S. of the United States.

Application.

No. 2729 Land Office, at Evanston, Wyoming.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of Whitley Collyer, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S ½ NE ¼ Sec. 30, Tp. 20 N. R. 116 W. 6th P. M. as additional to his original homestead on the ....., entered Boonville, Mo., per homestead No. 6348, dated Mch. 9, 1869.

THOMAS SNEDDON,
Assignee of Whitley Collyer.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 23rd day of Feb., 1905, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from ..... with application to enter same on the above described tract that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

FRANK M. FOOTE, Receiver.

1500 Plaintiff's Exhibit No. 113.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior.

United States Land Office,

Evanston, Wyoming.
February 23rd, 1905.

Thomas Sneddon, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the S ½ NE ¼ Sec. 30, Tp. 20 N., R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, within the Evanston, Wyo., land distict, on this 23rd day of February, 1905.

CHAS. KINGSTON,
Register.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1501 Plaintiff's Exhibit No. 115.

Receiver's Duplicate Receipt No. 2729.

Application No. 2729.

Homestead.

Receiver's Office, Evanston, Wyo.

Oct. 4th, 1905.

Received of Thomas Sneddon, assignee of Whitley Collyer, the sum of Eleven dollars .... cents; being the amount of fee and compensation of Register and Receiver for the entry of the S 2 NE 4 of Section 30 in Township 20 North of Range 116 West, under Section No. 2290, Revised Statutes of the United States.

FRANK M. FOOTE,
Receiver.

$16.00

Entryman should read carefully the suggestions on the back of this receipt.

Soldiers Additional Homestead.

Suggestions to Homestead Entrymen.

First—Lands must be subject to entry.

Any entry must be canceled if it is made for lands which are either mineral or saline in character, or for lands which are embraced in or covered by any valid subsisting adverse settlement, application, entry, location, or other form of appropriation, or for lands which have already been granted, reserved, or withdrawn for any purpose.

Second—Entryman must be fully qualified to make entry.

All entries must be canceled when they are held by persons of either of the following cla[illegible]: (1) Minors, who are not the heads of families; (2) aliens, w[illegible] not declared their intentions to become citizens; (3) married women, with certain exceptions; (4) persons who have exhausted their rights by making other homestead entries; (5) persons who were at the date of such entry the owners of more than 160 acres of land, and (6) persons who have, since August 30, 1890, acquired title to, or are claiming through settlement or entry, other agricultural public lands which with the lands last applied for exceed in the aggregate 320 acres.

Third—Fraudulent entries.

All entries must be declared fraudulent and canceled where (1) they are made by disqualified persons who falsely represent themselves to be qualified; (2) where they are not made for the sole purpose of actual residence and cultivation to obtain a home for the entryman, but are made wholly or in part in the interest of, or for the benefit of, some other person, and (3) where they were originally made in good faith but are afterwards held in the interest of or for the benefit of others. An entry made in good faith, without fraud, becomes a fraudulent entry and must be canceled if the entryman, before final proof, sells or agrees to sell the land, or any part thereof or interest therein, to some other person and thereafter continues his residence and cultivation, intending, after proof, to make a conveyance to such person.

Fourth—Continuous bona fide residence and cultivation necessary.

Homestead entries must be canceled in all cases where the entryman fails, for six months from the date of his entry, to actually abandon all other homes and make his home in good faith on the land entered; and when the entryman has in this manner actually established his bona fide home on the land to the entire exclusion of a home elsewhere, he must thereafter continuously reside upon and cultivate the land entered until he has earned a patent, and his failure to do so may result in the cancellation of his entry, unless the register and receiver, for good cause shown, grant him a leave of absence from the land. It should always be remembered by entrymen that they can not, while seeking title under the homestead laws, maintain a home anywhere except on the land.

Fifth—Timber on Lands covered by a Homestead entry.

Timber on lands covered by a homestead entry may be cut and removed by the entryman for the bona fide purpose of

clearing and improving the land for cultivation, and when timber has been actually cut for that purpose it may be removed and sold if it is not needed in the improvement of the land. But the cutting and removal of timber for any other purpose than to clear the land for cultivation will justify the cancellation of the entry and may result in criminal prosecution and punishment of the persons who cut it or permit it to be cut.

Sixth—Final Proof and Patent.

A homestead entryman may, by proving fourteen months' residence and cultivation and the payment of the minimum price of the land, in addition to certain fees, obtain a patent; or he may, by proof of five years' actual residence and cultivation, at any time within seven years from the date of his entry, obtain a patent by the payment of the fees and commissions only, except in certain cases. But the entryman may take credit for the length of time he resided upon and cultivated the land prior to his entry, either in making commutation proof or final five years' proof. Soldiers of the war of the rebellion, the Spanish-American war, and the Philippine insurrection, and their widows and minor orphans are, under certain circumstances, entitled to have the period of their service deducted from the period of five years' residence and cultivation, after they have resided upon and cultivated the land for one year.

An entryman desiring to make proof should, in writing, notify the register and receiver of that fact, mentioning the time and place where proof is to be made, the name of the officer before whom he desires to offer proof, and the names of at least four of his neighbors, who can testify of their own knowledge as to his residence and cultivation. Upon receipt of this notice the register will then issue and publish a notice naming the time, place, and the officer before whom proof is to be taken. On the date named in the notice the entryman must appear before the officer designated to take the proof with at least two of the witnesses named in the notice, and there give their testimony. If for any reason the entryman and his witnesses are not able to appear before the officer on the date named, the officer should continue the case from day to day until the expiration of ten days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is at all possible to do so, appear on the date named in the notice. Entrymen are advised that they should, whenever it is possible to do so, offer their proofs before the register and receiver, as it may be found necessary to refer all proofs made before other officers to a special agent for investigation and report before they can be

finally approved and patent issued thereon, while, if made before registers and receivers, there is less likelihood of this being done, and there is less probability of the proofs being incorrectly taken. By making proof before the register and receiver, entrymen will also save the fees which they would be required to pay other officers, as they are required under the law to pay to the register and receiver the same amount of fees in each case, regardless of the fact that the proof is taken before them or before some other officer.

Entrymen are cautioned against improvidently making commutation proofs as all such proofs will hereafter, as far as possible, be carefully examined into by special agents before patent is issued, and any attempt to improperly obtain title under the commutation law will not only result in the cancellation of the entry, but may result in the indictment and prosecution of the entryman.

Seventh—Fees.

The entryman should forward with his notice of intention to make final proof sufficient money to pay the newspaper for publishing his notice, or he should furnish the register with a statement from the publisher of the paper, or his agent, that the necessary money has been paid or deposited with the publisher. The newspaper is entitled to receive the same compensation for publishing this notice which it would be authorized to receive under the laws of the State for publishing legal notices of a similar character.

United States commissioners, United States court commissioners, and judges and clerks of courts of record who take proofs are authorized to receive no greater sum than 25 cents for each affidavit made before them, and 25 cents for administering the oath to each final-proof testimony, when such testimony is not written and prepared by them, but they are entitled to receive $1 for the testimony of each claimant and witness which is sworn to before them after they have prepared and written the testimony. Such officers can not act as attorneys or agents for entrymen in any matter, and should not receive compensation for such services.

On all proofs taken before either the register and receiver, or before any other officer authorized to take proofs, the register and receiver are entitled to 15 cents for each 100 words reduced to writing by themselves or others, and in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming they are entitled to receive 22½ cents for each 100 words.

In all cases, except commutation proofs, the entryman must pay the register and receiver, in addition to the testimony fee above mentioned, a commission of $1 for each 40-acre tract embraced in an entry made for lands outside of railroad grants, and $2 for each 40-acre tract within such limits in all the States and Territories except those above mentioned, and when the lands are situated in those States they should pay the sum of $1.50 and $3, respectively, for each 40-acre tract. All fees and commissions due the register and receiver should be paid at the time the final proofs are made or received at their office.

1502 Plaintiff's Exhibit No. 116.

Final Certificate No. 1139. Application No. 2729.

Homestead.

Department of the Interior.

United States Land Office.

Evanston, Wyo.,
Oct. 4th, 1905.

It is hereby certified That, pursuant to the provisions of Section No. 2306, Revised Statutes of the United States, Thomas Sneddon, assignee of Whitley Collyer, has made payment in full for S 2 NE 4 of Section No. 30, in Township No. 20 N., of Range No. 116 W., of the 6th Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Sol. Addl. H. E.

Final Certificate No. 1139. Homestead Application No. 2729. Land Office at Evanston, Wyo. Oct. 4th, 1905. Sec. 30, Town. 20 N., Range 116 W. Noted on Missouri Tract book. M. I. P. Missouri Division. Approved April 18, 1906. Mauress, Clerk, Division "P", Patented June 21, 1906. Recorded, Vol. 32, page 496.

1503 Plaintiff's Exhibit No. 121.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 2011
(755)

Land Office, at
Evanston, Wyoming, Feb. 16, 1901.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of William Vandyke, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the SW ¼ SE ¼ Sec. 6, Tp. 19 N. R. 116 W. 6th P. M., and N ½ SE ¼ Sec. 30, Tp. 20 N. R. 116 W. 6th P. M. as additional to his original homestead #1899 Ironton, Mo., entered Feb. 26, 1869, per homestead No. 1899, dated Feb. 26, 1869.

THOMAS SNEDDON,
Assignee of William Vandyke.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Thomas Sneddon filed the above application before me this 16th day of Feb., 1901, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the above described tract, that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

FRANK M. FOOTE, Receiver.

1504 Plaintiff's Exhibit No. 122.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyoming,
February 16th, 1901.

Thomas Sneddon, assignee of William Vandyke, being duly sworn according to law, deposes and says that he is the iden-

tical person who is an applicant for Government title to the SW ¼ SE ¼ Sec. 6, Tp. 19 N. R. 116 W. and N ½ SE ¼ Sec. 30 Tp. 20 N. R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyoming.

THOMAS SNEDDON,
Assignee of William Vandyke.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston land district, on this 16th day of February, 1901.

CHAS. KINGSTON,
Register.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states

or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1505 Plaintiff's Exhibit No. 123.

Final Receiver's Receipt No. 755.

Application No. 2011.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 23rd, 1901.

Received of Thomas Sneddon, assignee of William Vandyke, the sum of Nine dollars .... cents, being the balance of payment required by law for the entry of the SW 4 SE 4 Sec. 6, Tp. 19 and the N 2 SE 4 of Section 30 in Township 20 N. of Range 116 W. containing 120 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$1.91 Testimony fee received. Number of written words, 850 Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1506 Plaintiff's Exhibit No. 124.

Final Certificate No. 755. Application No. 2011.

Homestead.

Land Office at Evanston, Wyo.,
Feby. 23, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of William Vandyke has made payment in full for SW ¼ SE ¼ Sec. 6 Tp. 19 and the N ½ SE ¼ of Section No. 30, in Township No. 20 N., of Range No. 116 W., of the 6 Principal Meridian, containing 120 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

IJ. Soldiers Additional. '76 Noted on Mo. Tract book, Aug. 1, 1901. M. E. M. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 755. Homestead Application No. 2011. Noted on abst. Docket Index. Land Office at Evanston, Wyo. Feby. 23, 1901. Sec. 6-30, Town. 19 & 20 N, Range 116 W. (Ironton, Mo.) Wm. Vaindyke-cert. Certified right. No conflict. Div. C, List No. 46. Approved Nov. 16, 1901. J. Coller, Ex. Clerk, Division C. Patented Dec. 17, 1901. Recorded, Vol. 19, page 473.

Patent transmitted Jan. 7, 1902. To Register & Receiver.

1507 Plaintiff's Exhibit No. 129.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

Amended
No. .....

Land Office,
Evanston, Wyoming.

I, Daniel F. Harrison, of Uinta County, State of Wyoming, the legal assignee of Elizabeth, wid. of James Matthews, being entitled to the benefits of sections 2307 R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S½ SE ¼ Sec. 30 Tp. 20 N., R. 116 W., 6th P. M. as additional to his original homestead on the W ½ NE ¼ 80 Sec. 26, Tp. 120 N., R. 28 W., entered at the U. S. Land Office at Minneapolis, Minn., per homestead No. 1532, dated Apr. 7, 1865.

Amending application. Filed May 8th, 1899.

DANIEL F. HARRISON,
Assignee of Elizabeth, wid. of James Matthews.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above application before me this 24th day of Oct., 1904, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on the S 2 SE 4 Sec. 30, Tp. 20 N., R. 116 W. 6th P. M. that the

same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

FRANK M. FOOTE, Receiver.

Filed Feb. 3rd, 1903.

U. S. General Land Office. Received Oct. 31, 1904. 188469.

U. S. General Land Office. Received May 15, 1905. 80124.

1508 Plaintiff's Exhibit No. 130.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.,
May 8, 1899.

Daniel F. Harrison, assignee of Elizabeth Matthews, widow of James Matthews, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the S 2 SE 4 Sec. 30, Twp. 20 N., R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said

land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON,
Assignee of Elizabeth Matthews, widow of James Matthews.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 8" day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1509 Plaintiff's Exhibit No. 131.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior,

United States Land Office,

Evanston, Wyoming,
October 24, 1904.

Daniel F. Harrison, being duly sworn according to law, deposes and says that he is the identical Daniel F. Harrison who is an applicant for Government title to the S ½ SE ¼ Section 30, Tp. 20 N., R. 116 West, 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Merna, Wyoming.

DANIEL F. HARRISON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in ....., within the ..... land district, on this 24th day of October, 1904.

CHAS. KINGSTON,
Register.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

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Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

U. S. General Land Office. Received May 15, 1905. 80124.

1510 Plaintiff's Exhibit No. 132.

Final Receiver's Receipt No. 1015.

Application No. 2587.

Homestead.

Receiver's Office, Evanston, Wyo.

November 25th, 1904.

Received of Daniel F. Harrison, Assignee of Elizabeth Mathews, Widow of James Mathews, Deceased, the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the South Half of the South East Quarter (S ½ SE ¼) of Section Thirty (30) in Township 20 North of Range 116 West containing Eighty (80) acres, under Section 2291 of the Revised Statutes of the United States.

$6.00

FRANK M. FOOTE,
Receiver.

$..... Testimony fee received. Number of written words, ... Rate per 100 words ..... cents.

Soldiers Additional Homestead.

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1511 Plaintiff's Exhibit No. 133.

Final Certificate No. 1015. Application No. 2587.

Homestead.

Department of the Interior,

United States Land Office,

Evanston, Wyoming.
November 25, 1904.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of Elizabeth Matthews, widow of James Matthews, deceased, has made payment in full for the South Half South-East Quarter (S ½ SE ¼) of Section No. 30, in Township No. 20 North, of Range No. 116 West, of the 6th Principal Meridian, containing Eighty acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldier's Additional Homestead.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Noted in Minn. Vol. 4 Benson pg. 33. M. P. W. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 1015. Homestead Application No. 2587. Land Office at Evanston, Wyo. November 25th, 1904. Sec. 30, Town. 20 N, Range 116 W. No Atty. Approved June 1, 1905. B. A. Gow, Ex. Clerk, Division Ex. P. Patented June 30, 1905. Recorded, Vol. 18, page 358. P. H. L.

Transmitted patent Jul. 20, 1905. To Register & Receiver.

1512 Plaintiff's Exhibit No. 138.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. .....

Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of Hiram Driggs, being entitled to the benefits of

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Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the Lots 1, 2 & 3 Sec. 6 Tp. 19 N. R. 116 W. 6" P. M. as additional to his original homestead on the NE 4 SE 4 Sec. 14, Tp. 20, R. 19 E., entered at the U. S. Land Office at Topeka, Kansas, per homestead No. 645, dated April 4", 1864.

THOMAS SNEDDON,
Assignee of Hiram Driggs.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on Lots 1, 2 & 3 Sec. 6, Tp. 19 N. R. 116 W. 6th P. M., that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1513 Plaintiff's Exhibit No. 139.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyo.
Jun. 17, 1899.

Thomas Sneddon, assignee of Hiram Driggs, being duly sworn according to law, deposes and says that he is the identical person named as such assignee & who is an applicant for Government title to the Lots 1-2 & [2] Sec. 6, Top. 19 N. R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision

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thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 17" day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the

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United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1514 Plaintiff's Exhibit No. 140.

Final Receiver's Receipt No. 720.

Application No. 1934.

Homestead.

Receiver's Office, Evanston, Wyo.
Nov. 2d, 1900.

Received of Thomas Sneddon assignee of Hiram Driggs the sum of Nine dollars ..... cents, being the balance of payment required by law for the entry of Lots 1, 2 & 3 of Section 6 in Township 19 N. of Range 116 W. containing 124 & 50/100 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$2.75 Testimony fee received. Number of written words, 1221, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1515 Plaintiff's Exhibit No. 141.

Final Certificate No. 720. Application No. 1934.

Homestead.

Land Office at Evanston, Wyoming,
Nov. 2, 1900.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of Hiram Driggs has made payment in full for Lots 1-2 & 3 of Section No. 6, in Township No. 19 N., of Range No. 116 W., of the 6 Principal Meridian, containing 124.50 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldier's Additional Homestead.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Final Certificate No. 720. Homestead Application No. 1934. Land Office at Evanston, Wyoming. Nov. 2, 1900. Sec. 6, Town. 19 N., Range 116 W. Noted on Kansas book. Vol. 7-177. M. A. L. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Approved May 18, 1901. D. C. Sherman, Ex. Clerk, Division C. Patented July 9", 1901. Recorded, Vol. 23, page 420.

Patent transmitted. Aug. 6, 1901. To Register & Receiver.

1516 Plaintiff's Exhibit No. 146.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 2012 Land Office, at
(756) Evanston, Wyoming, Feb. 16th, 1901.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of William J. McGuire, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S ½ NE ¼ and SE ¼ SE ¼ Sec. 6 Tp. 19 N., R. 116 W. 6th P. M. as additional to his original homestead on the NE 4 NW 4 Sec. 14, Tp. 37, R. 17, entered Boonville, Mo., per homestead No. 8363, dated Feby. 27, 1871.

THOMAS SNEDDON,
Assignee of William J. McGuire.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Thomas Sneddon filed the above application before me this 16th day of Feb., 1901, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from ..... with application to enter same on the above described tract that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

FRANK M. FOOTE, Receiver.

1517 Plaintiff's Exhibit No. 147.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office,

Evanston, Wyoming.
February 16th, 1901.

Thomas Sneddon, assignee of William J. McGuire, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the S½ NE ¼ and SE ¼ SE ¼, Sec. 6, Tp. 19 N., R. 116 W. Sixth P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs of rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyoming.

THOMAS SNEDDON,
Assignee of William J. McGuire.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston land district, on this 16th day of February, 1901.

CHAS. KINGSTON,
Register.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1518 Plaintiff's Exhibit No. 148.

Final Receiver's Receipt No. 756.
Application No. 2012.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 23rd, 1901.

Received of Thomas Sneddon, assignee of William J. McGuire the sum of Nine dollars ..... cents, being the balance of payment required by law for the entry of the S 2 NE 4 & the SE 4 SE 4 of Section 6 in Township 19 N. of Range 116 W. containing 120 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$1.34 Testimony fee received. Number of written words, 593, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1519 Plaintiff's Exhibit No. 149.

Final Certificate No. 756. Application No. 2012.

Homestead.

Land Office at Evanston, Wyo.
Feby. 23, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of William J. McGuire has made payment in full for S ½ NE ¼ & the SE ¼ SE ¼ of Section No. 6, in Township No. 19 N., of Range No. 116 W., of the 6 Principal Meridian, containing 120 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the Genearl Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

185 31/01. M. E. M. Soldiers Additional. Final Certificate No. 756. Homestead Application No. 2012. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted on abst. Docket Index. Land Office at Evanston, Wyo. Feby. 23, 1901. Sec. 6, Town. 19 N. Range 116 W. Wm. J. McGuire, Cert. Certificate of right. No conflict. Boonville, Mo. Div. C, List No. 46. Approved Nov. 16, 1901. J. Coller, Ex. Clerk, Division C. Patented Dec. 17, 1901. Recorded, Vol. 19, page 474.

Patent transmitted, Jan. 7, 1902. To Register & Receiver.

1520 Plaintiff's Exhibit No. 154.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

4032
4207
40

12239

No. 1991
F. H. E. 745

Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of Lindsey Murdock, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the Lots 4 & 5 & SE 4 NW 4 Sec. 6 Tp. 19 N R. 116 Q. 6″ P. M. as additional to his original homestead on the SW 4 NE 4 Sec. 17, Tp. 30 N., R. 9 E., entered at the U. S. Land Office at Ironton, Missouri, per homestead No. 542, dated Oct. 31, 1866.

THOMAS SNEDDON,
Assignee of Lindsey Murdock.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on Lots 4 & 5 & SE ¼ NW ¼ Sec. 6 Tp. 19 N. R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1521 Plaintiff's Exhibit No. 155.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.,
Jun. 17, 1899.

Thomas Sneddon, assignee of Lindsey Murdock, being duly sworn according to law, deposes and says that he is the identical person named as such assignee & who is an applicant for Government title to the Lots 4 & 5 & SE 4 NW 4 Sec. 6 Tp.

19 N. R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 17" day of June, 1899.

.....

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes, —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the

United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1522 Plaintiff's Exhibit No. 156.

Final Receiver's Receipt No. 745.

Application No. 1991.

Homestead.

Receiver's Office, Evanston, Wyo.
Jany. 19th, 1901.

Received of Thomas Sneddon, assignee of Lindsey Murdock, the sum of Nine dollars ..... cents, being the balance of payment required by law for the entry of Lots 4 & 5 & the SE 4 NW 4 of Section 6 in Township 19 N. of Range 116 W. containing 122 & 39/100 acres, under Section 2291 of the Revised Statutes of the United States.

$9.00 FRANK M. FOOTE,
Receiver.

$2.03 Testimony fee received. Number of written words, 900 Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

F. C. 745. Ctf. ret. for correction May 25, 1901. W. F. S.

1523 Plaintiff's Exhibit No. 157.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Final Certificate No. 745. Application No. 1991.

Homestead.

Land Office at Evanston, Wyo.
Jan. 19, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of Lindsey Murdock has made payment in full for Lots 4 & 5 & SE ¼ NW ¼ of Section No. 6, in Township No. 19 N., of Range No. 116 W., of the 6th Principal Meridian, containing ..... acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Corrected by order of Hon. Com. letter "C", May 25, 1901, so as to read "To" Thomas Sneddon, assignee of Lindsay Murdock".

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Noted on Mo. tract book. Mar. 28/01. E. F. H. Vol. I, 7E p. 162. Final Certificate No. 745. Homestead Application No. 1991. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Land Office at Evanston, Wyo. Jan. 19, 1901. Sec. 6, Town. 19 N., Range 116 W. Mo. Div. C, List No. 24. Approved June 14, 1901. W. F. F., Ex. Clerk, Division C. Patented July 15, 1901. Recorded, Vol. 31, page 492.

Patent transmitted, Jul. 19, 1901. To Register & Receiver.

1524 Plaintiff's Exhibit No. 162.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 1995 (748) Land Office, Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of Philo L. Sherman, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 SE 4 Sec. 6 Tp. 19 N. R. 116 W. 6" P. M. as additional to his original homestead on the W 2 SW 4 Sec. 8, Tp. 25, R. 8 W, entered at the U. S. Land Office at Traverse City, Mich., per homestead No. 4539, dated July 20", 1871.

THOMAS SNEDDON,
Assignee of Philo L. Sherman.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1897, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from

Thomas Sneddon with application to enter same on the N ½ SE ¼ Sec. 6, Tp. 19 N., R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1525 Plaintiff's Exhibit No. 163.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.,
Jun. 17, 1899.

Thomas Sneddon, assignee of Philo L. Sherman, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the N 2 SE 4 Sec. 6, Tp. 19 N. R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard therto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that

said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 17" day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1526 Plaintiff's Exhibit No. 164.

Final Receiver's Receipt No. .....
Application No. .....

Homestead.

Receiver's Office, Evanston, Wyo.
Jany. 29th, 1901.

Received of Thomas Sneddon, assignee of Philo L. Sherman the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the N 2 SE 4 of Section 6 in Township 19 N. of Range 116 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$2.27 Testimony fee received. Number of written words, 1007 Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

F. C. No. 748. Evanston, Wyo. Jan. 29, 1901. R. & R. May 22, 1901, advised as to erroneous correction of testimony fee. J. C. R. & R. May 23, 1901, F. C. returned for correction by Register. J. C.

1527 Plaintiff's Exhibit No. 165.

Final Certificate No. 748. Application No. 1995.

Homestead.

Land Office at Evanston, Wyo.,
Jan. 29, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, assignee of Philo L. Sherman has made payment in full for N ½ SE ¼ of Section No. 6, in Township No. 19 N., of Range No. 116 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Corrected by order of Hon. Com. letter "C" of May 23rd, 1901, so as to issue to Thomas Sneddon, assignee of Philo L. Sherman.

CHAS. KINGSTON,
Register.

Addl. to original H. E. No. 4539, Traverse City, Michigan.
J. C.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Soldier's Additional. Noted on Mich. tract book Mar. 27/01. Vol. 29- 195. E. H. H. Final Certificate No. 748. Homestead Application No. 1995. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted abt. alld Jan. 24, 1901. Land Office at Evanston, Wyo. Jan. 29, 1901. Sec. 6, Town. 19 N, Range 116 W Mich. Return F. C. for correct name of soldier. Div. C, List No. 23. Approved June 8, 1901. Jacob Coller, Ex. Clerk, Division C. Patented July 9", 1901. Recorded, Vol. 23, page 431.

Patent transmitted, Aug. 6, 1901. To Register & Receiver.

1528 Plaintiff's Exhibit No. 170.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 1996 (749) Land Office, Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of Nathan B. Lewis, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the E 2 SW 4 Sec. 6 Tp. 19 N. R. 116 W. 6th P. M. as additional to his original homestead on the E 2 SE 4 Sec. 10, Tp. 11, R. 9 E, entered at the U. S. Land Office at Manhattan, Kansas, per homestead No. 4155, dated Aug. 1, 1873.

THOMAS SNEDDON,
Assignee of Nathan B. Lewis.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the W ½ NW ¼ Sec. 20, Tp. 20 N., R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1529 Plaintiff's Exhibit No. 171.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyoming.
Jun. 17, 1899.

Thomas Sneddon, assignee of Nathan B. Lewis, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the E 2 SW 4 Sec. 6 Tp. 19 N., R. 116 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 17th day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the

Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1530 Plaintiff's Exhibit No. 172.

Final Receiver's Receipt No. 749.
Application No. 1996.

Homestead.

Receiver's Office, Evanston, Wyo.
Jany. 29th, 1901.

Received of Thomas Sneddon, assignee of Nathan B. Lewis the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the E 2 SW 4 of Section 6 in Township 19 N. of Range 116 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$1.80 Testimony fee received. Number of written words, 802 Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1531 Plaintiff's Exhibit No. 173.

Final Certificate No. 749. Application No. 1996.

Homestead.

Land Office at Evanston, Wyo.
Jan. 29, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas

Sneddon, assignee of Nathan B. Lewis has made payment in full for E ½ SW ¼ of Section No. 6, in Township No. 19 N. of Range No. 116 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Additional to H. E. 4155 Topeka, Kansas.

Patent to contain reservation according to proviso to the Act of Aug 30, 1890.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 749. Homestead Application No. 1996. Land Office at Evanston, Wyo. Jan. 29, 1901. Sec. 6, Town. 19 N, Range 116 W. Noted on Kansas book, Vol. 1-28. M. A. L. Div. C, List No. 20. Approved May 18, 1901. W. F. S., Ex. Clerk, Division C. Patented July 9", 1901. Recorded, Vol. 23, page 432.

Patent transmitted, Aug. 6, 1901. To Register & Receiver.

1532 Plaintiff's Exhibit No. 178.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

42 12
42 17

No. 1997
(730)

Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of Daniel Farrington, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the Lots 6 & 7 Sec. 6 Tp. 19 N. R. 116 W. 6" P. M. as additional to his original homestead on the 80 acres in Sec. 32, Tp. 12 N., R. 14 E, entered at the U. S. Land Office at Detroit, Mich., per homestead No. 636, dated Jan. 15, 1869.

THOMAS SNEDDON,
Assignee of Daniel Farrington.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17 day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on Lots 6 & 7 Sec. 6, Tp. 19 N., R. 116 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1533 Plaintiff's Exhibit No. 179.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
Jun. 17, 1899.

Thomas Sneddon, assignee of Daniel Farrington, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the Lots 6 & 7 Sec. 6 Top. 19 N. R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked

for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo. land district, on this 17" day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1534 Plaintiff's Exhibit No. 180.

Receiver's Duplicate Receipt No. 1997.
Application No. 1997.

Homestead.

Receiver's Office, Evanston, Wyo.
Jany. 29th, 1901.

Received of Thomas Sneddon, assignee of Daniel Farrington the sum of Eleven dollars ..... cents; being the amount of

fee and compensation of Register and Receiver for the entry of Lots 6 & 7 of Section 6 in Township 19 North of Range 116 West, under Section No. 2290, Revised Statutes of the United States.

FRANK M. FOOTE,
Receiver.

$11.00

Entryman should read carefully the suggestions on the back of this receipt.

Soldiers Additional Homestead.

Suggestions to Homestead Entrymen.

First—Land must be Subject to Entry.

Any entry must be canceled if it is made for lands which are either mineral or saline in character, or for lands which are embraced in or covered by any valid subsisting adverse settlement, application, entry, location, or other form of appropriation, or for lands which have already been granted, reserved, or withdrawn for any purpose.

Second—Entryman must be fully Qualified to make Entry.

All entries must be canceled when they are held by persons of either of the following classes: (1) Minors, who are not the heads of families; (2) aliens, who have not declared their intentions to become citizens; (3) married women, with certain exceptions; (4) persons who have exhausted their rights by making other homestead entries; (5) persons who were at the date of such entry the owners of more than 160 acres of land, and (6) persons who have, since August 30, 1890, acquired title to, or are claiming through settlement or entry, other agricultural public lands which with the lands last applied for exceed in the aggregate 320 acres.

Third—Fraudulent Entries.

All entries must be declared fraudulent and canceled where (1) they are made by disqualified persons who falsely represent themselves to be qualified; (2) where they are not made for the sole purpose of actual residence and cultivation to obtain a home for the entryman, but are made wholly or in part in the interest of, or for the benefit of, some other person, and (3) where they were originally made in good faith but are afterwards held in the interest of or for the benefit of others. An entry made in good faith, without fraud, becomes a fraudulent entry and must be canceled if the entryman, before final proof, sells or agrees to sell the land, or any part thereof or interest therein, to some other person and thereafter continues his

residence and cultivation, intending, after proof, to make a conveyance to such person.

Fourth—Continuous bona fide Residence and Cultivation necessary.

Homestead entries must be canceled in all cases where the entryman fails, for six months from the date of his entry, to actually abandon all other homes and make his home in good faith on the land entered; and when the entryman has in this manner actually established his bona fide home on the land to the entire exclusion of a home elsewhere, he must thereafter continuously reside upon and cultivate the land entered until he has earned a patent, and his failure to do so may result in the cancellation of his entry, unless the register and receiver, for good cause shown, grant him a leave of absence from the land. It should always be remembered by entrymen that they can not, while seeking title under the homestead laws, maintain a home anywhere except on the land.

Fifth—Timber on Lands Covered by a Homestead Entry.

Timber on lands covered by a homestead entry may be cut and removed by the entryman for the bona fide purpose of clearing and improving the land for cultivation, and when timber has been actually cut for that purpose it may be removed and sold if it is not needed in the improvement of the land. But the cutting and removal of timber for any other purpose than to clear the land for cultivation will justify the cancellation of the entry and may result in criminal prosecution and punishment of the persons who cut it or permit it to be cut.

Sixth—Final Proof and Patent.

A homestead entryman may, by proving fourteen months' residence and cultivation and the payment of the minimum price of the land, in addition to certain fees, obtain a patent; or he may, by proof of five years' actual residence and cultivation, at any time within seven years from the date of his entry, obtain a patent by the payment of the fees and commissions only, except in certain cases. But the entryman may take credit for the length of time he resided upon and cultivated the land prior to his entry, either in making commutation proof or final five years' proof. Soldiers of the war of the rebellion, the Spanish-American war, and the Philippine insurrection, and their widows and minor orphans are, under certain circumstances, entitled to have the period of their service deducted from the period of five years' residence and cultivation, after they have resided upon and cultivated the land for one year.

An entryman desiring to make proof should, in writing, notify the register and receiver of that fact, mentioning the time and place where proof is to be made, the name of the officer before whom he desires to offer proof, and the names of at least four of his neighbors, who can testify of their own knowledge as to his residence and cultivation. Upon receipt of this notice the register will then issue and publish a notice naming the time, place, and the officer before whom proof is to be taken. On the date named in the notice the entryman must appear before the officer designated to take the proof with at least two of the witnesses named in the notice, and there give their testimony. If for any reason the entryman and his witnesses are not able to appear before the officer on the date named, the officer should continue the case from day to day until the expiration of ten days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is at all possible to do so, appear on the date named in the notice. Entrymen are advised that they should, whenever it is possible to do so, offer their proofs before the register and receiver, as it may be found necessary to refer all proofs made before other officers to a special agent for investigation and report before they can be finally approved and patent issued thereon, while, if made before registers and receivers, there is less likelihood of this being done, and there is less probability of the proofs being incorrectly taken. By making proof before the register and receiver, entrymen will also save the fees which they would be required to pay other officers, as they are required under the law to pay to the register and receiver the same amount of fees in each case, regardless of the fact that the proof is taken before them or before some other officer.

Entrymen are cautioned against improvidently making commutation proofs, as all such proofs will hereafter, as far as possible, be carefully examined into by special agents before patent is issued, and any attempt to improperly obtain title under the commutation law will not only result in the cancellation of the entry, but may result in the indictment and prosecution of the entryman.

Seventh—Fees.

The entryman should forward with his notice of intention to make final proof sufficient money to pay the newspaper for publishing his notice, or he should furnish the register with a statement from the publisher of the paper, or his agent, that the necessary money has been paid or deposited with the publisher. The newspaper is entitled to receive the same compensation for publishing this notice which it would be authorized

to receive under the laws of the State for publisihng legal notices of a similar character.

United States commissioners, United States court commissioners, and judges and clerks of courts of record who take proofs are authorized to receive no greater sum than 25 cents for each affidavit made before them, and 25 cents for administering the oath to each final-proof testimony, when such testimony is not written and prepared by them, but they are entitled to receive $1 for the testimony of each claimant and witness which is sworn to before them after they have prepared and written the testimony. Such officers can not act as attorneys or agents for entrymen in any matter, and should not receive compensation for such service.

On all proofs taken before either the register and receiver, or before any other officer authorized to take proofs, the register and receiver are entitled to 15 cents for each 100 words reduced to writing by themselves or others, and in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming they are entitled to receive 22½ cents for each 100 words.

In all cases, except commutation proofs, the entryman must pay the register and receiver, in addition to the testimony fee above mentioned, a commission of $1 for each 40-acre tract embraced in an entry made for lands outside of railroad grants, and $2 for each 40-acre tract within such limits in all the States and Territories except those above mentioned, and when the lands are situated in those States they should pay the sum of $1.50 and $3, respectively, for each 40-acre tract. All fees and commissions due the register and receive should be paid at the time the final proofs are made or received at their office.

1535 Plaintiff's Exhibit No. 181.

Final Certificate No. 750 Application No. 1997.

Homestead.

Land Office at Evanston, Wyo.
Jan. 28, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, ass. of Daniel Farrington, has made payment in full for Lots 6 & 7 of Section No. 6, in Township No. 19 N., of Range No. 116 W., of the 6 Principal Meridian, containing 84.29 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the

said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Additional to H. E. 636 Detroit, Mich.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted on Mich. tract book Mar. 27/01, Vol. 8-79. E. H. H. Final Certificate No. 750. Homestead Application No. 1997. Land Office at Evanston, Wyo. Jan. 29, 1901. Sec. 6, Town. 19 N., Range 116 W. Mich. Approved May 18, 1901. W. F. S., Ex. Clerk, Division C. Patented July 9", 1901. Recorded, Vol. 23, page 433.

Patent transmitted, Aug. 6, 1901. To Register & Receiver.

1536 Plaintiff's Exhibit No. 186.

Final Receiver's Receipt No. 753.
Application No. 2002.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 4th, 1901.

Received of Thomas Sneddon, assignee of Mahala C. Wilcox, widow of Charles Wilcox the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the E 2 NW 4 of Section 18 in Township 19 N. of Range 116 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$3.26 Testimony fee received. Number of written words, 1450, Rate per 100 words 22½ cents.

1537 Plaintiff's Exhibit No. 187.

Final Certificate No. 753 Application No. 2002.

Homestead.

Land Office at Evanston, Wyo.
Feb. 4, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas

Sneddon, ass. of Mahala C. Wilcox, widow of Charles Wilcox, deceased, has made payment in full for E ½ NW ¼ of Section No. 18, in Township No. 19 N., of Range No. 116 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Sol. Additional. Noted on Mich. T. B. July 31/01, Vol. 21-42. E. H. H. Final Certificate No. 753. Homestead Application No. 2002. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Noted T. B. Land Office at Evanston, Wyo. Feb. 4, 1901. Sec. 18, Town. 19 N., Range 116 N. (Ionia Mich.) Div. C, List No. 33. Approved Aug. 15, 1901. J. Coller, Ex. Clerk, Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 492.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1538 Plaintiff's Exhibit No. 188.

"C" EAH
WOC AY
W. L. K. 1899-78002 IVW
A. K. D.

Department of the Interior,

General Land Office,

Washington, D. C., January 30, 1901.

Address only the
Commissioner of the
General Land Office.

Thomas Sneddon, Assignee of Mahala C. Wilcox, Widow of Charles Wilcox, dec'd.

Soldier's Additional Homestead Application allowed.

Register and Receiver,
Evanston, Wyoming.

Gentlemen:

On June 17, 1899, you transmitted to this office the application of Thomas Sneddon, assignee of Mahala C. Wilcox, widow

of Charles Wilcox, deceased, to enter under Sec. 2307, R. S., the E ½ NW ¼ Sec. 18, Tp. 19 N., R. 116 W., 6th P. M., containing eighty acres, as additional to H. E. No. 2231 made by Charles Wilcox, at Ionia, Michigan, on June 1, 1866, for the E ½ NW ¼ Sec. 24, T. 14 N., R. 15 W., containing eighty acres, which was canceled for abandonment on October 24, 1868.

Said application is based on an assignment by Mahala C. Wilcox to George W. Arnold, Jr., of her husband's additional homestead right to eighty acres of public land, which was acknowledged on February 17, 1899, before Edward L. Brooks, a Notary Public of Newaygo County, Michigan, and at-
1539 tested by two witnesses.

In support of said application the following evidence is filed:

The affidavits of Mahala C. Wilcox, wherein she avers that she is the widow of said Charles Wilcox who was mustered into the military service of the United States as a private in Co. "A", 186th Regt., N. Y. Vol. Infty. on August 28, 1864, and was honorably discharged therefrom on June 3, 1865, and made H. E. No. 2231, at Ionia, Mich., on June 1, 1865; that neither she nor her said husband ever made any other homestead entry or prior application for additional entry, and no certificate of right of entry ever issued to either of them; that neither of them ever disposed of said additional right in any manner until February 17, 1899, when she sold and assigned the same to George W. Arnold, Jr.; that she was married to said Charles Wilcox under the name of Mahala C. Dolfe at Newfield, Mich., on July 15, 1869, that he died on June 18, 1896, and she has not since remarried, and that her post-office address is Hesperia, Mich.

The affidavit of two witnesses whose post-office addresses are given, stating that they have been acquainted with said Mahala C. Wilcox for 34 and 32 years respectively, and that they have reason to know her said statements to be true and that she is the person she represents herself to be.

The affidavit of two witnesses whose post-office addresses are given, stating that they were personally acquainted with said Charles Wilcox in his life time and that they knew him to be the same person that rendered the military service and
1540 made the original homestead entry as alleged.

A certified copy of a Marriage Certificate issued by Henry C. Hawley, a Justice of the Peace of Oceana Co., Mich., showing that said Charles Wilcox and Mahala C. Rolfe were married by him on July 15, 1869.

A certified copy of a Pension Certificate issued by the Secretary of the Interior on December 19, 1890 to Charles Wilcox of said Company and Regiment.

A report from the Adjutant General's Office of the State of New York, showing that Charles Wilcox was enlisted in and discharged from the military service as alleged.

The assignment of said soldier's additional right by said Arnold to said Sneddon dated April 14, 1899, duly acknowledged and attested by two witnesses.

The affidavit of said Arnold stating that he purchased said soldier's additional right in good faith and for a valuable consideration, and that as the bona fide legal owner thereof, he sold and assigned the same to said Sneddon.

The affidavit of said Sneddon stating that he is a naturalized citizen of the United States over 21 years of age; that he purchased said soldier's additional right in good faith and for a valuable consideration from said Arnold; that he is still the legal owner of said right and has not heretofore made any additional entry to said H. E. No. 2231.

1541 A certified copy of a certificate of naturalization issued to said Sneddon by the District Court of Uinta County, Wyoming, on September 18, 1886.

A non-mineral affidavit executed before you.

By letters "C" of October 18, 1900, the identifying witnesses were called upon for further information as to their acquaintance with the soldier. One of them replied by letter of October 23, 1900, that he had been acquainted with said Charles Wilcox since childhod, was his brother-in-law, visited him frequently while in the army, went to Michigan with him in 1868, and lived within two miles of him until his death. The other witness replied by letter of October 28, 1900, that he had only been acquainted with said Charles Wilcox since about the time he made his entry in 1866, but said Wilcox had a discharge and the necessary proof to be a member of the G. A. R., and witness was told by two other soldiers of said 186 N. Y. Regt., that said Charles Wilcox served in said regiment with them.

The records of this office show that Charles Wilcox made the original homestead entry as alleged and there is no record of any other entry made by him or his widow or of the issuance to either of them of a certificate of right of entry.

The alleged military service by Charles Wilcox is verified by a report from the War Department.

By office letter "C" of January 30, 1900, said Mahala C. Wilcox was notified of Sneddon's applicaiton as her assignee and allowed fifteen days to show cause why the same should not be allowed but no reply has been received from her.

1542 It thus appears that Charles Wilcox was entitled to a soldier's additional homestead of 80 acres; that he died on June 18, 1896, without having exercised said right; that upon his death the right inured to his widow, the said Mahala

C. Wilcox by virtue of Sec. 2307 R. S.; that said right has been duly assigned to the applicant Thomas Sneddon who is entitled to locate the same, and the tract applied for by him is shown by the records of this office to be vacant public land.

Said application and its accompanying papers are therefore returned herewith and you are directed, on payment of the legal fee and commissions within sixty days from notice hereof, to place the same of record in the name of Thomas Sneddon assignee of Mahala C. Wilcox, widow of Charles Wilcox deceased, and issue final certificate and receipt.

Serve notice and make report under circular of March 1, 1900 (29 L. D., 649).

Very respectfully,

BINGER HERMANN,
Commissioner.

MDT.

1543 Plaintiff's Exhibit No. 193.

Additional Entry.

Under Section 2306 of the R. S. of the United States.

Application.

No. 2077 Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyoming, the legal assignee of Amos Worrall, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 SE 4 Sec. 18 Tp. 19 N. R. 116 W-6" P. M. as additional to his original homestead on the W 2 SW 4 Sec. 28, Tp. 15, R. 17, entered at the U. S. Land Office at Topeka, Kansas, per homestead No. 1226, dated July 13, 1867.

THOMAS SNEDDON,
Assignee of Amos Worrall.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the N ½ SE ¼, Sec. 18, Tp. 19 N. R. 116 W. 6th P. M. that the same

was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1544 Plaintiff's Exhibit No. 194.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
Jun. 17, 1899.

Thomas Sneddon, assignee of Amos Worrall, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the N 2 SE 4 Sec. 18 Tp. 19 N., R. 116 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON,
Assignee of Amos Worrall.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that

said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 17" day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1545 Plaintiff's Exhibit No. 195.

Final Receiver's Receipt No. 780.
Application No. 2077.
Homestead.

Receiver's Office, Evanston, Wyo.
May 22d, 1901.

Received of Thomas Sneddon, assignee of Amos Worrall the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the N 2 SE 4 of Section 18 in Township 19 N. of Range 116 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$..... Testimony fee received. Number of written words, ... Rate per 100 words ..... cents.

Soldiers Additional Homestead.

1546 **Plaintiff's Exhibit No. 196.**

Final Certificate No. 780. Application No. 2077.

Homestead.

Land Office at Evanston, Wyo.
May 22nd, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2306 Revised Statutes of the United States, Thomas Sneddon, assignee of Amos Worrall has made payment in full for N ½ SE ¼ of Section No. 18, in Township No. 19 N., of Range No. 116 West, of the 6th Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon, assignee of Amos Worrall shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldiers addition homestead entry.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Noted on Kansas book July 31, 1901. Vol. 6-88. M. A. L. Sol. Additional. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Final Certificate No. 780. Homestead Application No. 2077. Noted T. B. Land Office at Evanston, Wyo. May 22nd, 1901. Sec. 18, Town. 19 N., Range 116 W. Topeka, Kans. Div. C, List No. 33. Ex. Approved Aug. 15, 1901. J. Coller, Clerk, Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 500.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1547 **Plaintiff's Exhibit No. 201.**

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. 2000
751

Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of Henry Harris, being entitled to the benefits

of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 NE 4 Sec. 12 Tp. 19 N. R. 117 W. as additional to his original homestead on the N 2 SW 4 Sec. 14, Tp. 16 N., R. 8 W., entered at the U. S. Land Office at Ionia, Mich., per homestead No. 2933, dated June 6", 1867.

THOMAS SNEDDON,
Assignee of Henry Harris.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the N ½ NE ¼ Sec. 12, Tp. 19 N. R. 117 W. 6th P. M., that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1548 Plaintiff's Exhibit No. 202.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
Jun. 17, 1899.

Thomas Sneddon, assignee of Henry Harris, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the N 2 NE 4 Sec. 12 Tp. 19 N. R. 117 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision

thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer cement gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 17″ day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the

United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1549 Plaintiff's Exhibit No. 203.

Final Receiver's Receipt No. 751.
Application No. 2000.

Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 4th, 1901.

Received of Thomas Sneddon, assignee of Henry Harris, the sum of Sis dollars..... cents, being the balance of payment required by law for the entry of the N 2 NE 4 of Section 12 in Township 19 N. of Range 117 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$1.88 Testimony fee received. Number of written words, 836 Rate per 100 words 22½ cents.

1550 Plaintiff's Exhibit No. 204.

Final Certificate No. 751. Application No. 2000.

Homestead.

Land Office at Evanston, Wyo.
Feb. 4th, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, Ass. of Henry Harris has made payment in full for N ½ NE ¼ of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Sol. Additional. Noted on Mich. T. B. July 31/01. Vol. 19-85. E. H. H. Noted T. B. Final Certificate No. 751. Homestead Application No. 2000. Patent to contain reservation ac-

cording to proviso to the Act of Aug. 30, 1890. Land Office at Evanston, Wyo. Feb. 4, 1901. Sec. 12, Town. 19 N., Range 117 W. (Ionia, Mich.) Div. C, List No. 33. Approved Aug. 14, 1901. Ex. J. Coller, Clerk, Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 490.

Patent transmitted, Sep. 25, 1901. To Register & Receiver.

1551 Plaintiff's Exhibit No. 209.

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. .....

Land Office,
Evanston, Wyo., May 8, 1899.

I, Daniel F. Harrison of Uinta County, State of Wyoming, the legal assignee of George W. Brown, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S 2 NE 4 Sec. 12 Tp. 19 N. R. 117 W.-6" P. M. as additional to his original homestead on the E " NW 4 Sec. 6, Tp. 25, R. 17 E, entered at the U. S. Land Office at Humbolt, Kansas, per homestead No. 1747, dated April 26", 1868.

DANIEL F. HARRISON,
Assignee of George W. Brown.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above application before me this 8th day of May, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on the S ½ NE ¼ Sec. 12, Tp. 19 N. R. 117 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed May 8th, 1899.

1552 **Plaintiff's Exhibit No. 210.**

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.,
May 8, 1899.

Daniel F. Harrison, assignee of George W. Brown, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the S 2 NE 4 Sec. 12, Top. 19 N. R. 117 W. 6″ P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON,
Assignee of George W. Brown.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 8th day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1553 Plaintiff's Exhibit No. 211.

Final Receiver's Receipt No. 715.
Application No. 1929.

Homestead.

Receiver's Office, Evanston, Wyo.
Nov. 2d, 1900.

Received of Daniel F. Harrison, assignee of George W. Brown, the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the S 2 NE 4 of Section 12 in Township 19 N. of Range 117 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$2.36 Testimony fee received. Number of written words, 1048, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1554 Plaintiff's Exhibit No. 212.

Final Certificate No. 715 Application No. 1929.

Homestead.

Land Office at Evanston, Wyo.
Nov. 2, 1900.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of George W. Brown, has made payment in full for S ½ NE ¼ of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6th Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldiers Additional Homestead.

Orig. H. E. 1747, Humboldt, Kan.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Noted. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. W. Dept. rept. 70210-99. Final Certificate No. 715. Homestead Application No. 1929. To chief of Div. M. & R. & R. June 5/01. Land Office at Evanston, Wyo. Nov. 2, 1900. Sec. 12, Town. 19 N., Range 117 W. Noted on Kansas book, Vol. 2-122. M. A. L. Div. C, List No. 23. Approved June 7, 1901. C. J. S., Ex. Clerk, Division C. Patented July 9, 1901. Recorded, Vol. 23, page 416.

Patent transmitted. Aug. 6. 1901. To Register & Receiver.

1555 Plaintiff's Exhibit No. 217.

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. 1931. Land Office,
Evanston, Wyo., May 8, 1899.

I, Daniel F. Harrison of Uinta County, State of Wyoming, the legal assignee of Parley Post, being entitled to the benefits

of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 SE 4 Sec. 12 Tp. 19 N. R. 117 W.-6″ P. M. as additional to his original homestead on the E 2 SW 4 Sec. 14, Tp. 94, R. 31, entered at the U. S. Land Office at Fort Dodge, Iowa, per homestead No. 3438, dated Jan. 20″, 1873.

DANIEL F. HARRISON,
Assignee of Parley Post.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above application before me this 8th day of May, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on the N 2 SE ¼ Sec. 12 Tp. 19 N., R. 117 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed May 8th, 1899.

1556 Plaintiff's Exhibit No. 218.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
May 8, 1899.

Daniel F. Harrison, assignee of Parley Post, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the N 2 SE 4 Sec. 12 Top. 19 N. R. 117 W. 6″ P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision

thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any veir or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON,
Assignee of Parley Post.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 8″ day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover,

thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1557 Plaintiff's Exhibit No. 219.

Final Receiver's Receipt No. 717.
Application No. 1931.

Homestead.

Receiver's Office, Evanston, Wyo.
Nov. 2d, 1900.

Received of Daniel F. Harrison, assignee of Parley Post the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of The N 2 SE 4 of Section 12 in Township 19 N. of Range 117 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$3.14 Testimony fee received. Number of written words 1394, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1558 Plaintiff's Exhibit No. 220.

Final Certificate No. 717. Application No. 1931.

Homestead.

Land Office at Evanston, Wyoming.
Nov. 2, 1900.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of Parley Post has made payment in full for N ½ SE ¼ of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldiers Additional Homestead.

Addl. to original H. E. No. 3438, J. C. Fort, Dodge, Iowa.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

According to proviso to the Act of Aug. 30, 1890. Noted on Iowa tract book. Mar. 28/01. Vol. 83, p. 125. E. H. H. Final Certificate No. 717. Homestead Application No. 1931. Noted abt. Land Office at Evanston, Wyoming. Nov. 2, 1900. Sec. 12, Town. 19 N., Range 117 W. Iowa. R & R May 22, 1901, advised of erroneous collection of testimony fee. J. C. Approved May 21, 1901. Jacob Coller, Ex. Clerk, Division "C". Patented July 9", 1901. Recorded, Vol. 23, page 418.

Patent transmitted, Aug. 6, 1901. To Register & Receiver.

1559 Plaintiff's Exhibit No. 225.

Additional Entry

Under Section 2306 of the Revised Statutes of the United States.

Application.

No. 2020 Land Office,
Evanston, Wyo., May 8, 1899. 187

I, Daniel F. Harrison of Uinta County, State of Wyoming, assignee of Jacob R. Deardorff, being entitled to the benefits of Section 2306 of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S 2 SE 4 Sec. 12, Top. 19 N., R. 117 W-6" P. M. as additional to my original homestead on the Lot 2 Sec. 2 T. 33 R. 28 Mo. which I entered at Springfield, Mo., 18.., per homestead No. 4242.

DANIEL F. HARRISON,
Assignee of Jacob R. Deardorff.

Land Office, Evanston, Wyo., March 9th, 1901.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Daniel F. Harrison filed the above application before me, for the tract of land therein described and that he has paid the fee and commissions prescribed by law.

CHAS. KINGSTON, Register.

1560 Plaintiff's Exhibit No. 226.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
May 8, 1899.

Daniel F. Harrison, assignee of Jacob R. Deardorff, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the S 2 SE 4 Sec. 12, Top. 19 N. R. 117 W. 6th P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON,
Assignee of Jacob R. Deardorff.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo., land district, on this 8th day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the

Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Soldier's Additional. Jacob R. Deardorff. U. S. Land Office. Filed May 8, 1899. Charles Kingston, Reg., Evanston, Wyo. 1899 62072-1.

1561 Plaintiff's Exhibit No. 227.

Final Receiver's Receipt No. 760. Application No. 2020.

Homestead.

Receiver's Office, Evanston, Wyo.
March 9th, 1901.

Received of Daniel F. Harrison, assignee of Jacob R. Deardorff the sum of Six dollars ..... cents, being the balance of payment required by law for the entry of the S ½ SE ¼ of Section 12 in Township 19 N. of Range 117 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$1.97 Testimony fee received. Number of written words, 875, Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1562 Plaintiff's Exhibit No. 228.

Final Certificate No. 760. Application No. 2020.

Homestead.

Land Office at Evanston, Wyo.
March 9th, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of Jacob R. Deardorff, has made payment in full for S ½ SE ¼ of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6th Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

168/85. Sol. Additional. Noted on Mo. Tract book July 31/01. M. E. M. Noted T. B. Final Certificate No. 760. Homestead Application No. 2020. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Div. C, List No. 33. Land Office at Evanston, Wyo. March 9, 1901. Sec. 12, Town. 19 N, Range 117 W. (Springfield, Mo.) 152570/1900 advise Burdette, Thompso and Law. Advise J. Vance Lewis. Attys. advised Aug. 19, 1901. J. C. Ex. Approved Aug. 19, 1901. Ex. J. Coller, Clerk, Division C, Patented Aug. 29, 1901. Recorded, Vol. 14, page 496.

Patent. transmitted, Sep. 25, 1901. To Register & Receiver.

1563 Plaintiff's Exhibit No. 233.

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. 2001
752

Land Office,
Evanston, Wyo.

I, Thomas Sneddon of Uinta County, State of Wyo., the legal assignee of Mortimer E. Crandall, being entitled to the benefits of Section 2306, R. S. of the United States, granting

additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 NW 4 Sec. 12 Tp. 19 N. R. 117 W. 6" P. M. as additional to his original homestead on the N " NE 4 Sec. 18, Tp. 25, R. 15 W, entered at the U. S. Land Office at Traverse City, Mich., per homestead No. 2382, dated April 9, 1867.

THOMAS SNEDDON,
Assignee of Mortimer E. Crandall.

I, Charles Kingston, Register of the Land Office at Evanston, Wyoming, do hereby certify that Thomas Sneddon filed the above application before me this 17th day of June, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHARLES KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Thomas Sneddon with application to enter same on the N ½ SW ¼ Sec. 12, Tp. 19 N. R. 117 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed June 17th, 1899.

1564 Plaintiff's Exhibit No. 234.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
Jun. 17, 1899.

Thomas Sneddon, assignee of Mortimer E. Crandall, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the N 2 NW 4 Sec. 6. Tp. 19 N. R. 117 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his

personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

THOMAS SNEDDON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston Wyo., land district, on this 17 day of June, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover,

thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1565 Plaintiff's Exhibit No. 235.

Final Receiver's Receipt No. 752.
Application No. 2001.
Homestead.

Receiver's Office, Evanston, Wyo.
Feby. 4th, 1901.

Received of Thomas Sneddon, assignee of Mortimer E. Crandall the sum of Six dollars..... cents, being the balance of payment required by law for the entry of the N 2 NW 4 of Section 12 in Township 19 N. of Range 117 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$2.56 Testimony fee received. Number of written words, 1137 Rate per 100 words 22½ cents.

1566 Plaintiff's Exhibit No. 236.

Final Certificate No. 752. Application No. 2001.

Homestead.

Land Office at Evanston, Wyo.
Feb. 4, 1901.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Thomas Sneddon, Ass. of Mortimer E. Crandall has made payment in full for N ½ NW ¼ of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Sneddon shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Sol. Additional 24. Noted on Mich. T. B. July 31, 1901. Vol. 33-93. E. H. H. Noted T. B. Final Certificate No. 752.

Homestead Application No. 2001. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Land Office at Evanston, Wyo. 24 Feb. 4, 1901. Sec. 12, Town. 19 N., Range 117 W. Traverse City, Mich. Div. C, List No. 33. Approved Aug. 15, 1901. Ex. J. Coller, Clerk, Division C. Patented Aug. 29, 1901. Recorded, Vol. 14, page 491.

Patent transmitted Sep. 25, 1901. To Register & Receiver.

1567 **Plaintiff's Exhibit No. 241.**

Nonmineral Affidavit.

1930

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.
May 8, 1899.

Daniel F. Harrison, assignee of John A. Thomas, being duly sworn according to law, deposes and says that he is the identical person named as such assignee who is an applicant for Government title to the S 2 NW 4 Sec. 12 Tp. 19 N. R. 117 W. 6" P. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object

of securing said land for agricultural purposes; and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON,
Assignee of John A. Thomas.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo. land district, on this 8″ day of May, 1899.

BENJ. M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1568 Plaintiff's Exhibit No. 242.

Final Receiver's Receipt No. 716.
Application No. 1930.

Homestead.

Receiver's Office, Evanston, Wyo.
Nov. 2d, 1900.

Received of Daniel F. Harrison, assignee of John A. Thomas the sum of Six dollars ..... cents, being the balance of pay-

ment required by law for the entry of The S 2 NW 4 of Section 12 in Township 19 N. of Range 117 W. containing 80 acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

$1.65 Testimony fee received. Number of written words, 735 Rate per 100 words 22½ cents.

Soldiers Additional Homestead.

1569 Plaintiff's Exhibit No. 243.

Final Certificate No. .... Application No. ....

Homestead.

Land Office at Evanston, Wyoming.
Nov. 2, 1900.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of John A. Thomas has made payment in full for S ½ NW ¼ of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6 Principal Meridian, containing 80 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldiers Additional Homestead.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. N. C. Test. fee. Thomas. Final Certificate No. 716. Homestead Application No. 1930. Land Office at Evanston, Wyo. Nov. 2, 1900. Sec. 12, Town. 19 N., Range 117 W. Mo. Noted on Mo. Tract Book. M. E. M. May 31/01. To R. & R. as to test. fee. J. W. A. Div. C, List No. 22. Approved May 20, 1901. J. W. A., Ex. Clerk. Division C. Patented July 9", 1901. Recorded, Vol. 23, page 417.

Patent transmitted, Aug. 6, 1901. To Register & Receiver.

1570 Plaintiff's Exhibit No. 249.

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. 2386 Land Office,
Evanston, Wyo., May 8, 1899.

I, Daniel F. Harrison of Uinta County, State of Wyoming, the legal assignee of William Cooley alias Erastus Havens, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the N 2 SW 4 Sec. 12 Tp. 19 N. R. 117 W.—6″ P. M. as additional to his original homestead on the S′ NE 4 Sec. 10, Tp. 20 N., R. 9 W., entered at the U. S. Land Office at Ionia, Michigan, per homestead No. 3573, dated March 20, 1868.

DANIEL F. HARRISON,
Assignee of William Cooley, alias Erastus Havens.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above application before me this 8th day of May, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on the N 2 SW 4 Sec. 12, Tp. 19 N. R. 117 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed May 8th, 1899.

1571 Plaintiff's Exhibit No. 251.

Final Receiver's Receipt No. 886.
Application No. 2386.

Homestead.

Receiver's Office, Evanston, Wyo.
April 3rd, 1903.

Received of Daniel F. Harrison, assignee of William Cooley, alias Erastus Havens the sum of Six dollars ..... cents, be-

ing the balance of payment required by law for the entry of the N ½ of the SW ¼ of Section 12 in Township 19 N. of Range 117 W. containing Eighty acres, under Section 2291 of the Revised Statutes of the United States.

$6.00 FRANK M. FOOTE,
Receiver.

1572 Plaintiff's Exhibit No. 252.

Final Certificate No. 886. Application No. 2386.

Homestead.

Land Office at Evanston, Wyoming.
April 3rd, 1903.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, assignee of William Cooley alias Erastus Havens has made payment in full for N 2 SW 4 of Section No. 12, in Township No. 19 North, of Range No. 117, of the 6th Principal Meridian West, containing Eighty acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel F. Harrison, assignee of William Cooley alias Erastus Havens shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Sub. non-saline Aff. regd. July 28 M. Atty. Noted on Mich. T. B. Vol. 24-17. E. H. H. Final Certificate No. 886. Homestead Application No. 2386. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Land Office at Evanston, Wyoming. April 3rd, 1903. Sec. 12, Town. 19 N., Range 117 W. Non saline aff. regd. Aug. 3/03 B. R. M. To And for War Dept. Nov. 5/03 B. R. M. Div. C, List No. 82. Approved Dec. 26, 1893. B. R. M., Ex. Clerk, Division C. Patented March 1st, 1904. Recorded, Vol. 4, page 318.

Transmitted patent Mar. 7, 1904. To Register & Receiver.

1573 Plaintiff's Exhibit No. 257.

Additional Entry

Under Section 2306 of the R. S. of the United States.

Application.

No. 2240

Land Office,
Evanston, Wyo., May 8, 1899.

I, Daniel F. Harrison of Diamondville, Uinta County, State of Wyoming, the legal assignee of Andrew M. Allen, being entitled to the benefits of Section 2306, R. S. of the United States, granting additional lands to soldiers and sailors who served in the war of the Rebellion, do hereby apply to enter the S 2 SW 4 Sec. 12 Tp. 19 N. R. 117 W. 6" P. M. as additional to his original homestead on the 80 acres in Sec. 8, Tp. 14 N., R. 1 E Mich. Mer., entered at the U. S. Land Office at Saginaw, Michigan, per homestead No. 487, dated May 26", 1863.

DANIEL F. HARRISON,
Assignee of Andrew M. Allen.

I, Chas. Kingston, Register of the Land Office at Evanston, Wyo., do hereby certify that Daniel F. Harrison filed the above application before me this 8th day of May, 1899, for the tract of land therein described and that there is no prior adverse right to the same.

CHAS. KINGSTON, Register.

I hereby certify that the hereto attached assignment of soldier's additional homestead was this day received from Daniel F. Harrison with application to enter same on the S 2 SW ¼ Sec. 12 19 N. R. 117 W. 6th P. M. that the same was noted upon the tract books and further action thereon suspended until advice from the Honorable Commissioner, that the fees and commissions are tendered in full.

BENJ. M. AUSHERMAN, Receiver.

Filed May 8th, 1899.

1574 Plaintiff's Exhibit No. 258.

Nonmineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

United States Land Office.

Evanston, Wyo.,
May 8, 1899.

Daniel F. Harrison, assignee of Andrew M. Allen, being duly sworn according to law, deposes and says that he is the iden-

tical person named as such assignee who is an applicant for Government title to the S 2 SW 4 Sec. 12 Top 19 N R 117 W 6th P M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post-office address is Diamondville, Wyo.

DANIEL F. HARRISON,
Assignee of Andrew M. Allen.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Evanston, Wyo., within the Evanston, Wyo. land district, on this 8th day of May, 1899.

BENJAMIN M. AUSHERMAN,
Receiver.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. —Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered,

that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

1575 Plaintiff's Exhibit No. 259.

Final Receiver's Receipt No. 822.

Application No. 2240.

Homestead.

Receiver's Office, Evanston, Wyo.
March 22th, 1902.

Received of Daniel F. Harrison, ass. of Andrew M. Allen the sum of Six dollars and 00/100 cents, being the balance of payment required by law for the entry of S 2 SW 4 of Section 12, in Township 19 N., of Range 117 W. containing eighty acres, under Section 2291 of the Revised Statutes of the United States.

$6.00/100 FRANK M. FOOTE,
Receiver.

$..... Testimony fee received. Number of written words, ... Rate per 100 words, ... cents.

Soldiers Additional Homestead.

1576 Plaintiff's Exhibit No. 260.

Final Certificate No. 822. Application No. 2240.

Homestead.

Land Office at Evanston, Wyo.
March 22, 1902.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, Daniel F. Harrison, ass. of Andrew M. Allen has made payment in full for S 2 SW 4 of Section No. 12, in Township No. 19 N., of Range No. 117 W., of the 6th Principal Meridian, containing 80 00/100 acres.

Now, therefore, be it known, That on presentation of this certificate to the Commissioner of the General Land Office, the

said Daniel F. Harrison ass. of Andrew M. Allen shall be entitled to a patent for the tract of land above described.

CHAS. KINGSTON,
Register.

Soldiers Additional Homestead.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

Andrew M. Allen. Noted on Mich. T. B. E. H. H. Vol. 4/106. Final Certificate No. 822. Homestead Application No. 2240. Div. C, List No. 20. Land Office at Evanston, Wyo. March 22nd, 1902. Sec. 12, Town. 19 N., Range 117 W. Div. C, List No. 20. Michigan Div. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Approved May 17, 1902. J. H. T., Clerk, Division C. Ex. Patented Sept. 26, 1902. Recorded, Vol. 30, page 140.

Patent transmitted. Oct. 4, 1902. To Register & Receiver.

1577 Plaintiff's Exhibit No. 268.

No. 853.

Coal Declaratory Statement.

I Thomas Sneddon, of Diamondville, Wyoming, do solemnly swear that I am over 21 years of age, and a citizen of the United States; that I never have, either as an an individual or as a member of an association, held or purchased any coal lands under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, and I do hereby declare my intention to purchase, under the provisions aforesaid, the West half of the West half, (W ½ of W ½) quarter of section 20, in township 20 N. of range 116 W, of lands subject for sale at the district land office at Evanston, Wyo., and that I came into possession of said tract on the first day of October A. D. 1897, and have ever since remain in actual possession continuously that I have located and opened a valuable vein of coal thereon and have expended in labor and improvements on said mine the sum of thirty dollars, the labor and improvements being as follows: in digging prospects holes and uncovering ledges of coal: and I do furthermore solemnly swear that I am well acquainted with the character of said described land, and with each and every legal sub-division thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto: that there is not to my knowledge, within the limits thereof any vein or

lode of quartz or rock in place bearing gold, silver, or copper, and that there is not within the limits of said land to my knowledge any valuable deposit of gold silver or copper. So help me God.

(Signed) THOMAS SNEDDON.

Subscribed and sworn to before me this 28th day of March, 1898.

(Signed) CHARLES KINGSTON,
Register.

1578 United States of America,
State of Wyoming,
County of Uinta.

I, William Sneddon, being duly sworn according to law, depose and say that I am well acquainted with the character of the within described land, and with each and every legal subdivision thereof, having frequently passed over the same: that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper: and that there is not to my knowledge, within the limits of said land, any valuable mineral deposits, other than coal, and that said lands does contain large deposits of coal and is chiefly valuable therefor.

(Signed) WILLIAM SNEDDON.

Subscribed and sworn to before me this 28th day of March A. D. 1898.

(Signed) CHARLES KINGSTON,
Register.

U. S. Land Office,
Evanston, Wyo.
March 23rd, 1907.

I hereby certify that I have compared the foregoing with the Coal Declaratory Statement made by Thomas Sneddon and that the same is a true and correct copy.

FRANK M. FOOTE,
Receiver.

1579 United States of America,

Certificate of citizenship.

On the 18th day of Sept. 1886 Thomas Sneddon was admitted by District Court of Uinta Co., Territory of Wyoming, to be a citizen of the United States of America.

(Seal) (Signed) JESSE KNIGHT,
Clerk of the Court.

S. A. H. #733.

PLAINTIFF'S EXHIBIT No. 269.

ABSTRACT of Declaratory Statements filed in the Land Office at Evanston, Wyo., during the month of July 1898, on lands which have ..... been offered at public sale under the President's Proclamation.

No. of Statement Filed	Date of Settlement	Date When Filed	Name	Description	Section	Township	Range	Remarks
860	June 14/98	July 5/98	Marion Aitken.....	E 2 N E 4.....	.....	.....	.....	.....
.....	.....	.....	Kemmerer Wyo.....	E 2 S E 4.....	18	19	116	.....

Cash Coal #124 (Aug. 26-1899 Cancelled by Letter "N" of Dec. 29-1899. Reinstated by Letter "N" of Jany 8-1900 Patent issued Feby 3-1900.) (Delivered to B. M. Ausherman at U. S. Land Office, Mch 5-1900).

I hereby certify the above and foregoing to be a true abstract of Coal Declaration Statements made in the month of July 1898, so far as relates to the entry of Marion Aitken.

FRANK M. FOOTE,
Receiver

Evanston Wyo.
Feby 29-1908.

NOTE.—Matter set in black face is in red ink in original copy.

BLUEPRINTS

TOO

LARGE

FOR

FILMING

1588

PLAINTIFF'S EXHIBIT No. 277.

List of patents issued and recorded in the Recorder's office at Evanston, Wyoming.

Entry No.	Name	Date of Patent	Recorded.	Book.	Page
908.	Thos. Sneddon.	Nov 10, 1903.	Dec. 29, 1903.	J.	301.
719.	Dan'l F. Harrison	July 9, 1901.	August 22, 1901.	J.	139.
747.	Thos. Sneddon,	July 9, 1901.	Oct. 4, 1901.	J.	161.
757.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	153.
775.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	154.
776.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	157.
744.	Thos. Sneddon,	July 15, 1901.	Oct. 4, 1901.	J.	158.
790.	Thos. Sneddon,	Dec. 17, 1902.	Jan. 26, 1903.	J.	242.
733.	Thos. Sneddon,	July 9, 1901.	Oct. 4, 1901.	J.	159.
746.	Thos. Sneddon,	July 9, 1901,	Oct. 4, 1901,	J.	160.
754.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	152.
718.	Dan'l F. Harrison,	July 15, 1901.	Aug. 22, 1901.	J.	135.
758.	Dan'l F. Harrison,	Aug. 29, 1901.	Oct. 4, 1901.	J.	147.
755.	Thos. Sneddon,	Dec. 17, 1901.	Jan. 24, 1902.	J.	179.
1015.	Dan'l F. Harrison,	June 30, 1905.	Aug. 1, 1905.	J.	391.
720.	Thos. Sneddon,	July 9, 1901.	Oct. 4, 1901.	J.	165.
756.	Thos. Sneddon,	Dec. 17, 1901.	Jan. 24, 1902.	J.	180.
745.	Thos. Sneddon,	July 15, 1901.	Oct. 4, 1901.	J.	164.
748.	Thos. Sneddon,	July 9, 1901	Oct. 4, 1901.	J.	162.
755.	Thos. Sneddon,	Dec. 17, 1901.	Jan. 24, 1902.	J.	179.
749.	Thos. Sneddon,	July 9, 1901.	Oct. 4, 1901.	J.	163.
750.	Thos. Sneddon,	July 9, 1901.	Oct. 4, 1901.	J.	155.
753.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	151.
780.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	156.
751.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	149.
715.	Dan'l F. Harrison,	July 9, 1901.	Aug. 22, 1901.	J.	136.
717.	Dan'l F. Harrison,	July 9, 1901.	Aug. 22, 1901.	J.	138.
760.	Dan'l F. Harrison,	Aug. 29, 1901.	Oct. 4, 1901.	J.	148.
1589					
752.	Thos. Sneddon,	Aug. 29, 1901.	Oct. 4, 1901.	J.	150.
716.	Dan'l F. Harrison,	July 9, 1901.	Aug. 22, 1901.	J.	137.
886.	Dan'l F. Harrison,	Mar. 1, 1904.	Mar. 17, 1904.	J.	317.
822.	Dan'l F. Harrison,	Sept. 26, 1902. (Feb.)	Nov. 3, 1902.	J.	219.

Deeds.

All the lands patented to Thomas Sneddon on the dates given above, were conveyed by said Thomas Sneddon and wife, Christina, to Diamond Coal and Coke Company, by W. D. dated August 22nd, 1901, and Recorded February 27, 1902, in book L. page 90; Consideration $1.00.

All the land patented to Daniel F. Harrison on the dates given above, were conveyed by the said Daniel F. Harrison, to the Diamond Coal and Coke Company, by W. D. dated May

8th, 1899, and recorded Nov. 23, 1899, book H. page 371, Consideration $1000.00.

Plaintiff's Exhibit No. 278.

1590 Numbers and date, of Cash Coal Entries, Cash Entries and Coal Declaratory Statements, made in Townships 18-19-20-21/-N. R 116 West of the 6th P. M., and Townships 18, 19 & 20, N. R. 117 West, of the 6th P. M.

TOWNSHIP 18, N. R. 117 WEST.

CASH COAL ENTRY, NO. 161. Made August 19th, 1901.

COAL DECLARATORY STATEMENTS.

490.	October	4,	1890.
491.	"	"	"
946.	May	3,	1900.
947.	"	"	"
1040.	August	20	1901.
1041.	"	"	"
1042.	"	"	"
1043.	"	"	"
1181.	March	10,	1903.
1182.	"	"	"
1272.	October	7,	"
1357.	Feb'y.	25,	1905.
1358.	"	"	"
1359	"	"	"

TOWNSHIP No. 19, N. R. 117 WEST.

CASH COAL ENTRIES.

133.	April	26,	1900.
134.	"	"	"
135.	"	"	"
136.	"	"	"

COAL DECLARATORY STATEMENTS.

171.	July	11,	1884.
176.	"	"	"
185.	"	"	"
197.	"	"	"
200.	"	"	"
240.	August	12,	1885.
242.	"	"	"
256.	"	"	"
268.	"	"	"
272.	September	9,	1885.
282.	"	"	"
319.	"	8,	1886.
323.	"	"	"
328.	"	"	"
336.	"	25	"
344.	November,	19,	"
347.	"	"	"

1591 Sheet No. 2. TOWNSHIP No. 19, N. R. 117 WEST.

COAL DECLARATORY STATEMENTS.

480.	September	15,	1890.
481.	"	"	"
482.	"	"	"
483.	"	19,	"
484.	"	"	"
485.	"	"	"
486.	"	"	"
487.	"	"	"
488.	"	"	"
489.	"	"	"
496.	October	28,	"
978.	December	12,	1900.
993.	"	22	"

TOWNSHIP 20, N. R. 117 WEST.

CASH COAL ENTRIES.

32.	July	14,	1887.
34.	"	19,	"
38.	August,	30,	"
39.	"	"	"
46.	Sept.	1,	1887.
58.	December	20,	1888.
59.	"	"	"
60.	"	"	"
91.	May	11,	1891.

COAL DECLARATORY STATEMENTS.

46.	June	1,	1882.
161.	July	11,	1884.
166.	"	"	"
167.	"	"	"
169.	"	"	"
175.	"	"	"
176.	"	"	"
180.	"	"	"
181.	"	"	"
183.	"	"	"
184.	"	"	"
186.	"	"	"
187.	"	"	"
190.	"	"	"
198.	"	"	"
199.	"	"	"
243.	August	12,	1885.
252.	"	"	"
257.	"	"	"
259.	"	"	"
260.	"	"	"
263.	"	"	"
264.	"	"	"
266.	"	"	"
267.	"	"	"

392 Sheet No. 3. TOWNSHIP 20, N. R. 117 WEST

COAL DECLARATORY STATEMENTS.

271.	September	9,	1885.
273.	"	"	"
276.	"	"	"
277.	"	"	"
278.	"	"	"
280.	"	"	"
314.	"	8,	1886.
317.	"	"	"
318.	"	"	"
320.	"	"	"
321.	"	"	"
322.	"	"	"
324.	"	"	"
325.	"	"	"
329.	"	29,	"
330.	"	"	"
331.	"	"	"
334.	"	"	"
337.	"	"	"
346.	November	19,	"
349.	"	"	"
364.	August	6,	1887
373.	October	18,	"
374.	"	"	"
376.	December	5,	"
377.	"	"	"
378.	"	"	"
379.	"	"	"
1401	"	27,	1905.
1402.	"	"	"
1403.	"	"	"
1404.	"	"	"
1405.	"	"	"
1406.	"	"	"
1407.	"	"	"
1408.	January	20,	1906.
1409.	"	"	"
1410.	"	"	"

1593 Sheet No. 4. TOWNSHIP 18, N. R. 116 WEST.

CASH COAL ENTRIES.

157.	March	6,	1901.
160.	June	7,	"

COAL DECLARATORY STATEMENT.

968. September 27, 1900.

TOWNSHIP 19, N. R. 116 WEST.

CASH COAL ENTRIES.

122.	August	26, 1899.
123.	"	" "
124.	"	" "
130.	February	2, 1900.
131.	"	" "
132.	"	" "
155.	March	6, 1901.
156.	"	" "
158.	"	" "
173.	September	21, 1903.

COAL DECLARATORY STATEMENTS.

593.	May	26, 1893.
594.	"	" "
597.	"	29, "
994.	December	27, 1900.
1323.	August	13, 1904.
1324.	"	" "
1325.	"	" "
1326.	"	" "
1336.	October	24, "
1337.	"	" "
1385.	July	29, 1905.
1386.	"	" "
1387.	"	" "
1388.	"	" "
1389.	"	" "
1393.	"	" "

1594 Sheet No. 5. TOWNSHIP 20, N. R. 116 WEST.

CASH COAL ENTRIES.

36.	July	19, 1887.
51.	April	7, 1888.
120.	April	15, 1889.
121.	April	15, 1889.

CASH ENTRIES.

283.	December	6, 1897.
284.	"	" "
288.	March	15, 1898.
290.	"	21, "
291.	"	" "
374.	November	27, "

COAL DECLARATORY STATEMENTS.

595. May 29, 1893.
596. " " "
615. October 26, "
617. " " "
726. June 14, 1895.
727. " " "
963. September 11, 1900.
1326. August 3, 1904.
1327. " " "
1329. September 6, "
1330. " " "
1390. July 29, 1905.
1391. " " "
1392. " " "
1394. " " "

95 Sheet No. 6. TOWNSHIP NO. 21, N. R. 116 WEST.

CASH COAL ENTRIES.

2. April 25, 1882.
3. " " "
4. " " "
5. " 26. "
6. " " "
7. " " "
8. May 16, "
9. June 7, "
10. " 10, "
30. July 13, 1887.
31. " 14 "
33. " " "
35. " 19, "
37. August 30, "
39. " " "
40. " " "
41. September 1, 1887.
42. " 2, "
43. " " "
44. " " "
45. " " "
47. " 5, "
87. April 24, 1891.
88. " 30, "
92. June 11, "
51. April 7, 1888.
80. May 9, 1890.
106. January, 30, 1893.
109. February 27, 1895.
110. January 7, 1897.
111. " 20, "
112. July 16, "
113. " " "
114. " " "
115. August 23, "
116. May 24, 1898.
117. April 28, 1899.
118. " " "
119. " " "
129. February 2, 1900.

CASH ENTRIES.

124.	May	4, 1889.
135.	December	23, "
253.	May	25, "
273.	February,	24, "
344.	"	2, 1900.
367.	September	27, "
380.	January	9, 1901.
597.	July	1, 1907.

COAL DECLARATORY STATEMENTS.

1413.	March	6, 1906.
1414.	"	" "

BLUEPRINTS

TOO

LARGE

FOR

FILMING

CHARTS

TOO

LARGE

FOR

FILMING

1606 The State of Wyoming,
County of Uinta—ss.

I hereby certify that the foregoing is a true and correct copy of the 1904 schedule purporting to be the assessment for taxation of the Diamond Coal & Coke Company for said year as returned by the County Assessor for the Board of Equalization for said County and State.

In Testimony Whereof, I have hereunto set my hand and official seal this 25th day of March A. D. 1908.

(Seal) DONALD McALLISTER,
County Clerk and Clerk to Board of Equalization.

1607 DIAMOND COAL & COKE COMPANY.

Improvements and machinery at No. 1 mine, Diamondville, Wyo.

40	Tenement residences at 110	4400	
20	Tenements on hill at 135	2700	
10	Tenements west of store at 225	2250	
1	Superintendent's house	380	
1	Draughting office	130	
1	Electric building	160	
1	Boiler house, No. 1	270	
1	Engine house, brick, No. 1	270	
1	Blacksmith shop	160	
1	Machine shop	80	
1	Barn	550	
1	Tipple building	550	
1	Daly Hotel Building	4500	
10	Boilers at 360		3600
1	Hoisting engine		5400
	Machine shop equipment		540
1	Snow pump		540
1	Dynamo & engine		1800
3	Boilers at electric light works		810
1	Fan at No. 1		1080
		16400	13770

Number 2 mine.

20	4 room tenements at 110	2200	
5	3 room tenements at 80	400	
5	2 room tenements at 65	325	
1	Boarding house	270	
1	5 room boarding house	135	
1	6 room boarding house	160	
6	2 room houses at 16	96	
1	Boiler house	450	
1	Engine house	160	
1	Tipple building	650	
1	Blacksmith shop	110	
1	Stable	225	
8	Boilers at 360		2880
1	Hoisting engine		2160
1	Fan		990
1	Pump, water works		225
1	Car haul & conveyor		225
		5181	6480

Number 4 mine.

1	Boiler house	450	
1	Engine house	160	
1	Barn	270	
1	Boarding house	110	
1	Blacksmith shop	110	
24	Brick tenements at 335	8040	
1	Tipple	360	
4	Dwellings at mine at 180	720	
7	Boilers at 360		2520
1	Hoisting engine		2160
1	Fan		1080
		10220	5760

Recapitulation.

Mine No 1	30170
" No. 2	11661
" No. 4	15980
	57811

1608 DIAMOND COAL & COKE COMPANY.

Land exempt under the mining law in the operating of No. 1 mine, Diamondville, Wyoming.

W 2 N W 4, S W 4, S E 4, S E 4 N E 4,	Sec	23	T 21 N	R 116 W.
S 2 N W 4, S W 4,	"	24	"	"
all	"	26	"	"
West half	"	25	"	"

Land exempt in the operating of number two mine. Diamondville, Wyo.

all	Sec	35	T 21 N	R 116 W.
West half	"	36	"	"
all	"	5	20	"
Lots 3 & 4, S W 4,	"	4	"	"

Land exempt in the operating of number four mine.
Diamondville, Wyo.

all	Sec	7	T	20	N R	116 W.
all	"	8	"		"	
all	"	17	"		"	
all	"	18	"		"	
all	"	19	"		"	
West half, & west half of east half	"	20	"		'	

CHART

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LARGE

FOR

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1610 The State of Wyoming,
County of Uinta—ss.

I hereby certify that the foregoing is a true and correct copy of the 1905 schedule with accompanying explanatory sheets purporting to be the assessment for taxation of the Diamond Coal & Coke Company for said year, as returned by the County Assessor for the Board of Equalization of said County and State.

In Testimony Whereof, I have hereunto set my hand and official seal this 25th day of March A. D. 1908.

(Seal) DONALD McALLISTER,
County Clerk and Clerk to Board of Equalization.

1611 DIAMOND COAL & COKE COMPANY.

	Improvements and machinery at No. 1 mine, Diamondville, Wyo.		
40	Tenements residences at 110	4400	
20	Tenements on hill at 135	2700	
10	Tenements west of store at 225	2250	
1	Superintendents house	380	
1	Draughting office	130	
1	Electric building	160	
1	Boiler house, No. 1	250	
1	Engine house, brick, No. 1	170	
1	Blacksmith shop	160	
1	Machine shop	80	
1	Barn	550	
1	Tipple building	350	
1	Daly Hotel Building	3000	
10	Boilers at 300		3000
1	Hoisting engine		5000
	Machine shop equipment		350
1	Snow pump		300
1	Dynamo and engine		1600
3	Boilers at electric light works		700
1	Fan at No. 1		800
		14580	11750

Number 2 mine.

20	Four room tenements at 110	2200	
5	Three room tenements at 80	400	
5	Two room tenements at 65	325	
1	Boarding house	270	
1	Five room house	135	
1	Six room house	160	
6	Two room houses at 16	96	
1	Boiler house	450	
1	Engine house	160	
1	Tipple building	400	
1	Blacksmith shop	110	
1	Stable	200	
8	Boilers at 300		2400
1	Hoisting engine		1700
1	Fan		700
1	Pump, water works,		150
1	Car haul and conveyor		150
		4906	5100

Number 4 mine.

1	Boiler house	450	
1	Engine house	160	
1	Barn	270	
1	Boarding house	110	
1	Blacksmith shop	110	
24	Brick Tenements at 335	8040	
1	Tipple	360	
4	Dwellings at mine at 180	360	
7	Boilers at 300		2100
1	Hoisting engine		1700
1	Fan		700
		10220	4500

1612 Recapitulation.

Mine No. 1	26330
" " 2	10006
" " 4	14720
	$51056

1613 DIAMOND COAL & COKE COMPANY.

Land exempt under the mining law in the operating of No. 1 mine, Diamondville, Wyoming.

W 2 N W 4, S W 4, S E 4, S E 4 N E 4,	Sec	23	T 21 N	R 116 W.
S 2 N W 4, S W 4,	"	24	"	"
all	"	26	"	"
West half	"	25	"	"

Land exempt in the operating of number two mine,
Oakley, Wyo.

all	Sec	25	T	21 N	R 116 W.
West half	"	36	"		"
all	"	5	20		"
Lots 3 & 4, S W 4,	"	4	"		"

Land exempt in the operating of number four mine.
Glencoe, Wyo.

all	Sec	7	T	20 N	R 116 W.
all	"	8	"		"
all	"	17	"		"
all	"	18	"		"
all	"	19	"		"
West half, & west half of east half	"	20	"		"

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1815 The State of Wyoming,
County of Uinta—ss.

I hereby certify that the foregoing is a true and correct copy of the 1906 schedule with accompanying explanatory sheets purporting to be assessment for taxation of the Diamond Coal & Coke Company for said year, as returned by the County Assessor for the Board of Equalization of said County and State.

In Testimony Whereof, I have hereunto set my hand and official seal this 25th day of March A. D. 1908.

(Seal) DONALD McALLISTER,
County Clerk and Clerk to Board of Equalization.

1816

PLAINTIFF'S EXHIBIT No. 285.

DIAMOND COAL & COKE COMPANY.

Improvements and machinery at No. 1 mine, Diamondville, Wyo.			
40	Tenement residences at 100	4000	
20	Tenements on hill at 100	2000	
10	Tenements west of store at 180	1800	
1	Superintendent's house	300	
1	Draughting office	100	
1	Electric building	130	
1	Boiler house	200	
1	Brick engine house	135	
1	Blacksmith shop	130	
1	Machine shop	65	
1	Barn	450	
1	Tipple building	250	
1	Daly Hotel building	2500	
13	Boilers at 250		3250
1	Hoisting engine		4500
	Machine shop equipment		250
1	Snow Pump		100
1	Dynamo and engine		1000
3	Boilers at electric light works		600
1	Fan and Fan house		600
		12060	10300

1617

DIAMOND COAL & COKE COMPANY.

	Improvements and machinery at No. 2 mine, Oakley, Wyo.		
20	Four room tenements at 100	2000	
5	Three room tenements at 70	350	
5	Two room tenements at 60	300	
1	Five room house	120	
1	Six room house	145	
6	Two room houses at 15	90	
1	Boiler house	400	
1	Engine house	145	
1	Tipple building	350	
1	Blacksmith shop	100	
1	Stable	175	
9	Boilers at 250		2250
1	Hoisting engine		1500
1	Fan		600
1	Pump at water works		135
1	Car haul and conveyor		130
		4425	4615

1618

DIAMOND COAL & COKE COMPANY.

	Improvements and machinery at No. 4 mine, Glencoe.		
1	Boiler house	450	
1	Engine house	160	
1	Barn	270	
1	Boarding house	110	
1	Blacksmith shop	110	
24	Brick tenements at 300	7200	
1	Tipple	360	
4	Dwellings at mine at 180	720	
7	Boilers at 250		1750
1	Hoisting engine		1700
1	Fan		700
		9380	4150

1619

RECAPITULATION.

Mine No. 1	22360
Mine No. 2	9040
Mine No. 4	13530
Total	$44930

1620

DIAMOND COAL & COKE COMPANY

Land exempt under the mining law in the operating of Mine No. 1, Diamondville, Wyoming.

W 2 N W 4, S W 4, S E 4, S E 4 N E 4,	Sec	23	T 21	N R	116 W.
S 2 N W 4, S W 4,	"	24	"		"
All	"	26	"		"
West half	"	25	"		"

Mine No. 2, Oakley, Wyoming.

All	Sec	35	T 21	N R	116 W.
West half	"	36	"		"
All	"	5	20		"
Lots 3 and 4, and S W 4,	"	4	"		"

Mine No. 4, Glencoe, Wyoming.

All	Sec	7	T 20	N R	116 W.
All	"	8	"		"
All	"	17	"		"
All	"	18	"		"
All	"	19	"		"
West half and west half of east half	"	20	"		"

CHART

TOO

LARGE

FOR

FILMING

1622 The State of Wyoming,
County of Uinta—ss.

I hereby certify that the foregoing is a true and correct copy of the 1907 schedule with accompanying explanatory sheets purporting to be the assessment for taxation of the Diamond Coal & Coke Company for said year, as returned by the County Assessor for the Board of Equalization of said County and State.

In Testimony Whereof, I have hereunto set my hand and official seal this 25th day of March A. D. 1908.

(Seal) DONALD McALLISTER,
County Clerk and Clerk to the Board of Equalization.

1623 Plaintiffs Exhibit No. 286.

Annual Report
of the
Diamond Coal & Coke
Company
For the Year Ending January 1st, 1905.

1624 ANNUAL REPORT

of

Sales, Cost and Profit, Diamondville Mines No. 1, 2 & 4 Located in in Uinta County, State of Wyoming, to the State Board of Equalization, for the Year Ending January 1st, 1905.

Name of property	Diamondville Mines Nos. 1, 2, 4.	
General Manager	F. W. C. Whyte	P. O. address Anaconda, Mont.
Superintendent	Thomas Sneddon	P. O. address Diamondville, Wyo.

Gross output in tons or gallons for year ending January 1, 1905	528813 Tons
Gross value of output for year ending January 1, 1905	$645336.21
Operating expenses for year ending January 1, 1905	$542101.07
Net profit for year ending January 1, 1905	$103235.14

COPY BOUND CLOSE IN CENTER

OPERATING EXPENSES.

Number of miners employed 343

Number of day laborers employed { Outside 70 / Inside 90

Salaries of Officers.

General Manager	$ 3200.00
General Superintendent	$ 3000.00
Other officers, Mining Engineer and Office Clerks,	$ 10072.70
Total	$ 16272.70
Cost of labor	$337846.58
Cost of new machinery	$ 23886.80
Cost of new material, including repairs	$ 61636.45
Cost of repairs	$
Taxes on coal output	$ 1849.21
Insurance	$ 2635.55
Dividends paid stockholders	$
Expenses due to accidents (itemized)	$ 3842.40
Mine Fire Cases $3600.00	
Hankin Injury 242.40	
Other Expenses, see top of next page	$ 74131.38
Total Operating Expenses, as above,	$542101.07
1625 Other expenses (itemized)	$ 74131.38
Office Expenses,	$ 3189.81
Sales Expenses,	7528.97
Legal Expenses	4651.23
Interest paid on borrowed money,	35563.85
Traveling Expenses,	695.93
Taxes on Mine Properties and lands, other than on Coal output,	1912.08
Sinking Fund,	20589.51

Give an itemized list of all amounts expended not enumerated above.

COPY BOUND

Description of lands, by legal subdivisions, claimed to be exempt from taxation.

All of section	5	T.	20	N.	R.	116	W. containing	370.32 Acres
" " "	7	"	"	"	"	"	"	640.00 "
" " "	8	"	"	"	"	"	"	640.00 "
" " "	17	"	"	"	"	"	"	640.00 "
" " "	18	"	"	"	"	"	"	640.00 "
" " "	19	"	"	"	"	"	"	640.00 "
W½ " "	20	"	"	"	"	"	"	320.00 "
W½ of E ½ of section	20	"	"	"	"	"	"	160.00 "
N½ of NW¼ " "	4	"	"	"	"	"	"	63.98 "
Lots in sections 7, 18 &	19	"	"	"	"	"	"	86.00 "
W½ of NW ¼ of section	23	T.	21	N.	R.	116	W. "	80.00 "
SE ¼ of NE ¼ "	23	"	"	"	"	"	"	40.00 "
S ½ of "	23	"	"	"	"	"	"	320.00 "
W ½ " "	24	"	"	"	"	"	"	320.00 "
½ " "	25	"	"	"	"	"	"	320.00 "
All of "	26	"	"	"	"	"	"	640.00 "
All of "	35	"	"	"	"	"	"	640.00 "
W ½ of "	36	"	"	"	"	"	"	320.00 "
Total								6880.30 Acres

STATE OF WYOMING, }
} ss.
County of Uinta. }

Thomas, Sneddon, Superintendent of the Diamond Coal & Coke Company, being duly sworn, deposes and says that he is the above entitled officer of said Company, and that the foregoing statement of the gross product in the year 1904 and the net value of such product at the Mines belonging to said Company, in the State of Wyoming, is true and correct as shown by the records and accounts of said Company.

THOS. SNEDDON, SUPT.

Subscribed and sworn to before me this 13th day of February, A. D. 1905.

(Seal) M. J. KAVANAGH,
Notary Public.

My commission expires November 23rd, 1907.

Report of the Diamond Coal & Coke Co. Mine [—] For the Year Ending January 1st, 1905. Filed in the office of the State Auditor this 17 day of Feby., A. D. 1905. LeRoy Grant, Auditor. F. J. Niswander, Deputy.

1626 **Plaintiffs Exhibit No. 287.**

Annual Report
of the
Diamond Coal & Coke Company
Company
For the Year Ending January 1st, 1906.
Mine No. 4.

CLOSE IN CENTER

1627

ANNUAL REPORT

of

Diamond Coal & Coke Company Mine No. 4.

Located in Uinta County, State of Wyoming, to the State Board of Equalization, for the Year Ending January 1st, 19—

Name of property Diamond Coal & Coke Company, Mine No. 4
General Manager F. W. C. Whyte P. O. address Anaconda, Montana.
Superintendent Thos. Sneddon P. O. address Diamondville, Wyoming.

Gross output in tons or gallons for year ending January 1, 1906 41227 Tons
Gross value of output for year ending January 1, 1906 ..... $51328.30
Operating Expenses for year ending January 1, 1906 ..... $39898.12

Net profit for year ending January 1, 1906 ..... $11430.18

OPERATING EXPENSES.

Number of miners employed 35
Number of day laborers employed { Outside 6 / Inside 9

Salaries of Officers.

General Manager	$
General Superintendent	$
Other officers	$
Total see Schedule, Mine No. 1	$ 1243.11
Cost of labor	$24840.59
Cost of new machinery	$
Cost of new material, Repairs, etc	$ 7980.45
Cost of repairs	$
Taxes	$ 774.53
Insurance	$ 666.94
Dividends paid stockholders	$
Expenses due to accidents (itemized)	$
Other Expenses, as shown on next page	4392.50
Total	39898.12

1628

Other expenses (itemized)	General Office Expenses	$ 235.91
	Stable Expenses	31.84
	Travelling Expenses	75.90
	Sales Expenses	607.32
	Legal Expenses	925.02
	Depreciation	2516.51
	Total	4392.50

Give an itemized list of all amounts expended not enumerated above.

Description of lands, by legal subdivisions, claimed to be exempt from taxation.

All of	Sec	7	T	20	N R	116	W	Containing	640.00 Acres
" "	"	8	"	20	" "	116	"	"	640.00 "
" "	"	17	"	20	" "	116	"	"	640.00 "
" "	"	18	"	20	" "	116	"	"	640.00 "
" "	"	19	"	20	" "	116	"	"	640.00 "
W ½ of	"	20	"	20	" "	116	"	"	320.00 "
W ½ of E ½	"	20	"	20	" "	116	"	"	160.00 "
Lots in Sections 7 and	"	18	"	20	" "	116	"	"	86.00 "

3766.00 Acres

STATE OF WYOMING }
COUNTY OF UNITA. } ss.

Thomas Sneddon, Superintendent of the Diamond Coal & Coke Company, being duly sworn, deposes and says that he is the above entitled officer of said Company, and that the foregoing statement of the gross product in the year 1905 and the net value of such product at the Mine No. 4 belonging to said Company, in the State of Wyoming, is true and correct as shown by the records and accounts of said Company.

THOMAS SNEDDON, SUPT.

Subscribed and sworn to before me this 3rd day of February, A. D. 1906.

M. J. KAVANAGH,

(Seal) Notary Public.

My commission expires November 23rd, 1907.

Report of the Diamond Coal & Coke Co. Mine #2. For the Year Ending January 1st, 1906. Filed in the office of the State Auditor this 5 day of Feby., A. D. 1906. LeRoy Grant, Auditor. F. J. Niswander, Deputy.

1629 **Plaintiffs Exhibit No. 288.**

Annual Report of the Diamond Coal & Coke Company Company For the Year Ending January 1st, 1906. Mine No. 2.

1630 ANNUAL REPORT

of

Diamond Coal & Coke Company, Mine No. 2 Located in Uinta County, State of Wyoming, to the State Board of Equalization, for the Year Ending January 1st, 19—

Name of property	Diamond Coal & Coke Company, Mine No. 2.	
General Manager	F. W. C. Whyte	P. O. address Anaconda, Montana.
Superintendent	Thos. Sneddon	P. O. address Diamondville, Wyoming.

Gross output in tons or gallons for year ending January 1, 1906..... 195525 Tons
Gross value of output for year ending January 1, 1906.....$230478.15
Operating expenses for year ending January 1, 1906.....$202538.89

Net profit for year ending January 1, 1906.....$ 27939.26

OPERATING EXPENSES.

Number of miners employed 104
Number of day laborers employed { Outside 21 / Inside 28

Salaries of officers.

General Manager	$
General Superintendent	$
Other officers	$
Total see Schedule Mine No. 1	$ 6032.26
Cost of labor	$141338.02
Cost of new machinery	$ 537.19
Cost of new material, Repairs, etc	$ 37401.08
Cost of repairs	$
Taxes	$ 2470.78
Insurance	$ 644.81
Dividends paid stockholders	$
Expenses due to accidents (itemized)	$
Other Expenses, as shown on next page,.	14114.75
Total	202538.89

1631 Other expenses (itemized)

General Office Expenses	$ 1704.20
Stable Expenses	129.63
Travelling Expenses	181.85
Sales Expenses	1918.71
Legal Expense	698.36
Depreciation	9482.00
Total	14114.75

Give an itemized list of all amounts expended not enumerated above.

Description of lands, by legal subdivisions, claimed to be exempt from taxation.

All of	Sec 5 T 20 N R 116 W	Containing	370.32 Acres
W ½ of	" 4 T 20 N R 116 W	Containing	223.98 "
All of	" 35 T 20 N R 116 W	Containing	640.00 "
W ½ of	" 36 T 20 N R 116 W	Containing	320.00 "
			1554.30 Acres

STATE OF WYOMING } ss.
County of Uinta. }

Thomas Sneddon, Superintendent of the Diamond Coal & Coke Co. Company, being duly sworn, deposes and says that he is the above entitled officer of said Company, and that the foregoing statement of the gross product in the

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year 1905 and the net value of such product at the Mine No. 2 belonging to said Company, in the State of Wyoming, is true and correct as shown by the records and accounts of said Company.

THOMAS SNEDDON, SUPT.

Subscribed and sworn to before me this 3rd day of February, A. D. 1906.

(Seal) M. J. KAVANAGH,
Notary Public.

My commission expires November 23rd, 1907.

Report of the Diamond Coal & Coke Co. Mine #4. For the Year Ending January 1st, 1906. Filed in the office of the State Auditor this 5 day of Feby., A. D. 1906. LeRoy Grant, Auditor. F. J. Niswander, Deputy.

1632 **Plaintiffs Exhibit No. 289.**

Annual Report of the Diamond Coal & Coke Company Company For the Year Ending January 1st, 1906.

Mine No. 1.

1633 ANNUAL REPORT

of

Diamond Coal & Coke Company Mine No. 1. Located in Uinta County, State of Wyoming, to the State Board of Equalization, for the Year Ending January 1st, 1906.

Name of property	Diamond Coal & Coke Company, Mine No. 1	
General Manager	F. W. C. Whyte	P. O. address Anaconda, Montana.
Superintendent	Thos. Sneddon	P. O. address Diamondville, Wyoming.

Gross output in tons or gallons for year ending January 1, 1906	223673 Tons
Gross value of output for year ending January 1, 1906,	$308865.06
Operating expenses for year ending January 1, 1906,	$288787.46
Net profit for year ending January 1, 1906,	$20077.60

ND CLOSE IN CENTER

OPERATING EXPENSES.

Number of miners employed 132 (Average per month)

Number of day laborers employed { Outside 41 / Inside 49

Salaries of Officers.

Generol Manager		$ 3200.00
General Superintendent		$ 3000.00
Other officers and Office Employees		$ 9401.87
Less Proportion of No. 2	6032.26	$ 15061.87
Total No. 4	1243.11	$ 7275.37
		8326.50
Cost of labor		$192791.32
Cost of new machinery		$ 4110.70
Cost of new material, Repairs, etc		$ 58999.61
Cost of repairs		$
Taxes		$ 3088.06
Insurance		$ 1153.45
Dividends paid stockholders		$
Expenses due to accidents (itemized)		$ None
Other expenses, as shown on next page,		20317.82
Total		$288787.46

1634 Other expenses (itemized)

General Office Expenses	$ 2476.74
Stable Expense	180.27
Travelling Expense	192.98
Sales Expenses	4777.92
Legal Expenses	833.38
Depreciation	11856.53
Total	20317.82

Give an itemized list of all amounts expended not enumerated above.

Description of lands, by legal subdivisions, claimed to be exempt from taxation.

W ½ of NW ¼ of Sec	23	T	21	N	R	116	W.	80.00 Acres
SE ¼ of NE ¼ of Sec	23	"	"	"	"	"	"	40.00 "
S ½ of Sec	23	"	"	"	"	"	"	320.00 "
W ½ of Sec	24	"	"	"	"	"	"	320.00 "
W ½ of Sec	25	"	"	"	"	"	"	320.00 "
All of Sec	26	"	"	"	"	"	"	640.00 "
								1720.00 Acres

STATE OF WYOMING } ss.
County of Uinta. }

Thomas Sneddon, Superintendent of the Diamond Coal & Coke Company, being duly sworn, deposes and says that he is the above entitled officer of said Company, and that the foregoing statement of the gross product in the year 1905 and the net value of such product at the Mine No. 1 belonging to said

Company, in the State of Wyoming, is true and correct as shown by the records and accounts of said Company.

THOMAS SNEDDON, SUPT.

Subscribed and sworn to before me this 3d day of February, A. D. 1906.

M. J. KAVANAGH,

(Seal) Notary Public.

My commission expires November 23d, 1907.

Report of the Diamond Coal & Coke Co. Mine #1. For the Year Ending January 1st, 1906. Filed in the office of the State Auditor this 5 day of Feby., A. D. 1906. LeRoy Grant, Auditor. F. J. Niswander, Deputy.

1635

The
State of Wyoming
Office of the
Secretary of State.

United States of America,
State of Wyoming—ss.

I, Wm. R. Schnitger, Secretary of State, of the State of Wyoming, do hereby certify that Leroy Grant was on the Sixth Day of November, A. D. 1908, duly elected as Auditor for the State of Wyoming, for a period of four years; that the said Leroy Grant was, at the time of signing the annexed instrument, duly authorized to sign same, by virtue of his said office; that I am acquainted with the handwriting of said Leroy Grant, and verily believe the signature to said annexed instrument to be genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Wyoming.

Done at Cheyenne, the Capital, this 18th day of March, A. D. 1908.

(Seal)

WM. R. SCHNITGER,
Secretary of State.
By .....,
Deputy.

1636 United States of America,
State of Wyoming—ss.

I, LeRoy Grant, State Auditor of the State of Wyoming, do hereby certify that the annexed are true and correct copies of the reports of the Diamond Coal and Coke Company, Mines Nos. 1, 2 and 4, for the years 1905 and 1906, now on file in my office.

In Witness Whereof, I have this day attached my seal of office in the City of Cheyenne, March 18th, A. D. 1908.

(Seal)

LEROY GRANT,
State Auditor & Secretary State Board of Equalization of the State of Wyoming.

U. S. OF A. VS

4—600 **PLAINTIFF'S**

TOWNSHIP No. RANGE No.

DESCRIPTION OF TRACT				CONTENTS		RATE PER ACRE		PURCHASE MONEY		NO
Part of Section	Section	Township	Range	Acres	100ths	Dol.	Cts.	Dol.	Cts.	
E. $N\frac{1}{2}$ $NE\frac{1}{4}$ $N\frac{1}{2}$ $NW\frac{1}{4}$	12	19	117	160	00	2	50	10	00	Ernes
" $S\frac{1}{2}$ $SE\frac{1}{4}$ $S\frac{1}{2}$ $SW\frac{1}{4}$	"	"	"	160	00	2	50	10	00	Charl
" $N\frac{1}{2}$ $SE\frac{1}{4}$ $N\frac{1}{2}$ $SW\frac{1}{4}$	"	"	"	160	00	2	50	10	00	Georg
" $S\frac{1}{2}$ $NE\frac{1}{4}$ $S\frac{1}{2}$ $NW\frac{1}{4}$	"	"	"	160	00	2	50	10	00	James
E. $W\frac{1}{2}$ $NW\frac{1}{4}$ $W\frac{1}{2}$ $SW\frac{1}{4}$	24	19	117	160	00	2	50	10	00	James
" $W\frac{1}{2}$ $NE\frac{1}{4}$ $W\frac{1}{2}$ $SE\frac{1}{4}$	"	"	"	160	00	2	50	10	00	Willia
" $E\frac{1}{2}$ $NW\frac{1}{4}$ $E\frac{1}{2}$ $SW\frac{1}{4}$	"	"	"	160	00	2	50	10	00	Andre
" $E\frac{1}{2}$ $NE\frac{1}{4}$ $E\frac{1}{2}$ $SE\frac{1}{4}$	"	"	"	160	00	2	50	10	00	Willia
All	24	19	117	640	00	For est s cript				Big B
E. $S\frac{1}{2}$ $NE\frac{1}{4}$ $NE\frac{1}{4}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$ $NW\frac{1}{4}$	6	19	116	160	00	2	50	10	00	Willia
" $SE\frac{1}{4}$	"	"	"	160	00	2	50	10	00	James
" Lots 5, 6, 7, S $E\frac{1}{2}$ $SW\frac{1}{4}$	"	"	"	166	36	2	50	10	00	Herbe
" $W\frac{1}{2}$ $NE\frac{1}{4}$ $E\frac{1}{2}$ $NW\frac{1}{4}$	18	"	"	160	00	2	50	10	00	Charle
" $W\frac{1}{2}$ $SE\frac{1}{4}$ $E\frac{1}{2}$ $SW\frac{1}{4}$	"	"	"	160	00	2	50	10	00	James
E. $SE\frac{1}{4}$	18	20	116	160	00	2	50	10	00	Willia
" $NE\frac{1}{4}$	"	"	"	160	00	2	50	10	00	Thoma
" $E\frac{1}{2}$ $NW\frac{1}{4}$ Lots 1 & 2	"	"	"	174	32	2	50	10	00	Robert
" $E\frac{1}{2}$ $SW\frac{1}{4}$ Lots 3 & 4	"	"	"	174	17	2	50	10	00	James
" $SE\frac{1}{4}$	30	"	"	160	00	2	50	10	00	Charle
" $NE\frac{1}{4}$	30	"	"	160	00	2	50	10	00	Willia
" $E\frac{1}{2}$ $SW\frac{1}{4}$ Lots 3 & 4	"	"	"	165	80	2	50	10	00	Thoma
" $E\frac{1}{2}$ $NW\frac{1}{4}$ Lots 1 & 2	"	"	"	169	40	2	50	10	00	Willia

NOTE—Matter in Bold face type in red ink in original copy.

4—600 **PLAINTIFF'S EXHIBIT No. 290 TO 306.**

RANGE No. , DISTRICT OF

	CONTENTS		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER	Date of Sale	Number of Receipt and Certificate of Purchase	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
Range	Acres	100ths	Dol.	Cts.	Dol.	Cts.						Volume	Page Ref. No.
117	160	00	2	50	10	00	Ernest Stevenson	July 16, '98	1503	Cancelled by Relinquishment	June 17, 1899		302
"	160	00	2	50	10	00	Charles Gove	" " "	1508	" " "	May 8 "		303
"	160	00	2	50	10	00	George Haddock	" " "	1509	" " "	" " "		304
"	160	00	2	50	10	00	James McDonald	" " "	1511	" " "	" " "		305
117	160	00	2	50	10	00	James Hunter	July 16, '98	1504	Cancelled by Relinquishment	Feby. 14, 1900 at 11:45 a. m.		
"	160	00	2	50	10	00	William Hotcthkiss	" " "	1505	" " "	" " " " " "		
"	160	00	2	50	10	00	Andrew O'Neil	" " "	1506	" " "	" " " " " "		
"	160	00	2	50	10	00	William Armstrong	" " "	1510	" " "	" " " " " "		306
117	640	00	For est s cript				Big Black Foot Milling Co.	Feby 28, 1900	1				
116	160	00	2	50	10	00	William H. Brown	July 5, 1898	1492	Cancelled by Relinquishment	June 17, 1899		297
"	160	00	2	50	10	00	James Thompson	" " "	1493	" " "	" " "		298
"	166	36	2	50	10	00	Herbert R. Crofts	Oct. 1, '98	1538	" " "	" " "		239
"	160	00	2	50	10	00	Charles Aitken	July 5, '98	1494	" " "	" " "		300
"	160	00	2	50	10	00	James Aitken	" " "	1495	" " "	" " "		301
116	160	00	2	50	10	00	William Sneddon	Mch. 28, 98	1433	Cancelled by Relinquishment	May 1st, '99		290
"	160	00	2	50	10	00	Thomas Sneddon	" " "	1434	" " "	" " "		291
"	174	32	2	50	10	00	Robert Sneddon	" " "	1435	" " "	" " "		292
"	174	17	2	50	10	00	James Wanless	" " "	1436	" " "	" " "		293
"	160	00	2	50	10	00	Charles A Moss	April 11, 98	1442	" " "	May 8 "		294
"	160	00	2	50	10	00	William C. Penman	" " "	1443	" " "	" " "		295
"	165	80	2	50	10	00	Thomas Kirby	" " "	1444	" " "	" " "		296
"	169	40	2	50	10	00	William Fern	" " "	1445	" " "	" " "		297

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1664 In the Circuit Court of the United States, for the District of Wyoming.

United States of America, Plaintiff,
No. 333. vs. In Equity.
Diamond Coal and Coke Company, a Corporation, Defendant.

Order.

Now on this day comes Timothy F. Burke, Esq., Attorney for the United States, the plaintiff herein, and presents to the court the account of Clyde M. Watts, Esq., Special Master in Chancery, to take and report the testimony in this cause.

Thereupon, upon motion of Timothy F. Burke, Esq., Attorney for the United States, and the court being fully advised in the premises, it is ordered by the court that the said account, amounting to the sum of One Thousand Six Hundred and Thiry-nine Dollars and Eighty Cents ($1639.80), be and the same is hereby approved.

JOHN A. RINER, Judge.

Endorsements: No. 333. U. S. of America, Plaintiff, vs. Diamond Coal & Coke Company; a Corporation, Defendant. Order approving Master's account. Filed June 1, 1908. Louis Kirk, Clerk. By Charles J. Ohnhaus, Deputy.

1665 Monday, June 1, 1908.

United States of America, Plaintiff,
No. 333. vs. In Equity.
Diamond Coal & Coke Company, a Corporation, Defendant.

It is ordered by the court that the account of A. C. Veatch, actual expense witness herein on behalf of the United States, amounting to the sum of One Hundred and Forty-five Dollars and forty-eight cents ($145.48) be and the same is hereby allowed.

1666 Wednesday, September 30, 1908.

United States of America, Plaintiff,
No. 333. vs.
Diamond Coal and Coke Company, a Corporation, Defendant.

Order.

This cause came on for final hearing this day before the court the complainant, The United States of America, being represented by Honorable M. C. Burch, Assistant to the Attorney General, and Honorable Timothy F. Burke, United

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States Attorney for the District of Wyoming, its attorneys; and the respondent, The Diamond Coal and Coke Company, a corporation, being represented by Honorable C. F. Kelley, Honorable L. O. Evans and Honorable B. M. Ausherman, its attorneys.

Thereupon counsel for the Government asked permission to amend its Bill of Complaint by substituting the name of "Daniel F. Harrison" for that of "Thomas Sneddon", in the third paragraph on page eight of its printed Bill of Complaint herein, being paragraph entitled "Entry No. 719". There being no objection, the application was granted and the amendment ordered.

Thereupon, the hearing in this case was proceeded with before the court upon the Bill of Complaint, Answer, Replication and Report of the Master herein, and the same was argued by counsel for the parties hereto, but not completed.

This cause was thereupon continued by the court until Thursday, October 1st, 1908, at 9:30 o'clock A. M.

1667 Thursday, October 1, 1908.

United States of America, Plaintiff,
No. 333. vs.
Diamond Coal and Coke Company, a Corporation, Defendant.

Now on this day again come the parties hereto being represented by their respective counsel, and the final hearing before the court in this cause was proceeded with, but not concluded.

This cause was thereupon continued by the court until Friday, October 2nd, 1908, at 9:30 o'clock A. M.

1668 Friday, October 2, 1908.

The United States of America, Plaintiff,
No. 333. vs.
The Diamond Coal and Coke Company, a corporation, Defendant.

Now on this day again come the parties hereto being represented by their respective counsel, and the final hearing before the court was proceeded with and the argument of counsel concluded.

The court thereupon granted counsel for the complainant herein, The United States of America, until the twentieth day of October, within which to file its brief; and to counsel for the respondent herein, The Diamond Coal and Coke Company, a Corporation, until fifteen days thereafter within which to file

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its brief; and to counsel for the complainant herein, The United States of America, until the first day of December, 1908, within which to file its reply brief.

1669 In the Circuit Court of the United States, for the Eighth Judicial Circuit, District of Wyoming.

United States of America, Plaintiff,
vs.
The Diamond Coal and Coke Company, a corporation, Defendant.

Order.

Now on this day the above entitled case coming on for revision of the order heretofore made fixing, the time within which briefs are to be filed, It Is Now Considered, Ordered and Adjudged that counsel for the Government shall have to and including the first day of February, 1909, within which to file their brief, and that counsel for the defendant shall have to and including the first day of March, 1909, within which to file their answer brief, and counsel for the Government shall have to and including the 15th day of March, 1909, within which to file their reply brief; said briefs to be filed with the clerk of this court, together with, in each instance, a copy to be forwarded to opposing counsel.

January 15th, 1909.

ROBT. E. LEWIS, Judge.

Endorsements: No. 333. In the U. S. Circuit Court, District of Wyoming. United States of America, Plaintiff, vs. The Diamond Coal and Coke Company, a Corporation, Defendant. Order fixing time for filing briefs. Filed Jany. 15, 1909. Louis Kirk, Clerk. By Charles J. Ohnhaus, Deputy.

1670 United States of America,
District of Wyoming—ss

In the Circuit Court of the United States for the District of Wyoming.

The United States of America, Complainants,
No. 333 vs.
The Diamond Coal and Coke Company, a Corporation, Respondent.

This cause came on to be heard at this term on final hearing and was argued by counsel, Marsden C. Burch, Esquire, Assistant to the Attorney, General and Timothy F. Burke, Esquire, District Attorney, appearing as Solicitors for the complainants and C. F. Kelley, Esquire, L. O. Evans, Esquire,

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and B. M. Ausherman, Esquire, appearing as Solicitors for the Respondent. And thereupon, on consideration thereof, it is ordered, adjudged and decreed by the Court that the Bill of Complaint herein be, and the same is, hereby dismissed out of this court.

Dated May 10th, A. D. 1909.

ROBT. E. LEWIS,
District Judge.

Endorsements: No. 333 U. S. Circuit Court, District of Wyoming. The United States of America, vs. Diamond Coal and Coke Company. Order dismissing case. Filed May 10, 1909. Louis Kirk, Clerk.

1671 In the Circuit Court of the United States for the Eighth Judicial Circuit, District of Wyoming.

United States of America, Plaintiff,
No. 333 vs.
The Diamond Coal and Coke Company, a Corporation, Defendant.

Petition of Appeal.

The above named complainant, considering itself aggrieved by the final decision of this cause made and entered on the 10th day of May, A. D. 1909, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit from said decree, and it prays that this, its appeal, may be allowed, and that a transcript, duly authenticated, of the record of proceedings in the above entitled case upon which said decree was made, together with the accompanying assignment of errors, may be transmitted with this bill to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated Cheyenne, Wyoming, August 24th, A. D. 1909.

M. C. BURCH,
Assistant to the Attorney General.

TIMOTHY F. BURKE,
United States Attorney for the District of Wyoming.

Solicitors for Complainant, United States of America.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

Dated August 24th, A. D. 1909.

JOHN A. RINER, Judge.

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1672 Endorsements: No. 333. Circuit Court of the United States, Eighth Judicial Circuit, District of Wyoming. United States of America, Plaintiff, vs. The Diamond Coal and Coke Company, a Corporation, Defendant. Petition of Appeal. Filed August 24, 1909. Louis Kirk, Clerk. By Charles J. Ohnhaus, Deputy. M. C. Burch, Assistant to Atty. Genl. Timothy F. Burke, United States Attorney.

1673 In the Circuit Court of the United States for the Eighth Judicial Circuit, District of Wyoming.

United States of America, Plaintiff,
No. 333 vs.
The Diamond Coal and Coke Company, a Corporation, Defendant.

Order.

This cause coming on to be heard upon the assignment of errors and petition of appeal heretofore [—] within the proper time filed herein by the complainant, United States of America, the petition for appeal aforesaid is allowed and such appeal granted.

JOHN A. RINER, Judge.

Endorsements: No. 333. In the Circuit Court of the United States, Eighth Judicial Circuit, District of Wyoming. United States of America, Plaintiff, vs. The Diamond Coal and Coke Company, a Corporation, Defendant. Order. Filed August 24, 1909. Louis Kirk, Clerk. By Charles J. Ohnhaus, Deputy.

1674 In the Circuit Court of the United States for the Eighth Judicial Circuit, District of Wyoming.

United States of America, Plaintiff,
No. 333. vs.
The Diamond Coal and Coke Company a Corporation, Defendant.

Assignment of Errors.

The complainant, United States of America, by M. C. Burch, Assistant to the Attorney General, and Timothy F. Burke, United States Attorney for the District of Wyoming, acting in pursuance of the express instructions of the Attorney General in that behalf given, files the following several assignments of error upon which it will rely upon its appeal from the final judgment made herein by this Honorable Court on the 10th day of May, A. D. 1909, saying that in the record and proceedings herein and in said final judgment there is manifest error,

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and for error the complainant assigns on the appeal the following:

I.

The complainant assigns as error the action of the circuit court in making and entering its order of May 10, A. D. 1909, adjudging and decreeing the dismissal out of court of complainant's bill of complaint.

II.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its
1675 order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that "The outcrop does not consist of a section of the vein rising above the surface of the ridge", and that "Along sections of its strike there is nothing whatever to indicate its presence", referring to the evidence of coal under the land in question as shown by the evidence given in the case.

III.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that "Mines have been successfully operated on the vein indicated by the outcrop some two or three miles northerly of the most northerly tract in question, and southerly from and near the most southerly tract in question", thereby implying that no mines had been operated otherwise on said line at or near the lands involved in this controversy.

IV.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that "At the times the lands were entered and at the times patents were issued, there were no indications whatever on any of the lands in question that coal existed in them", and that "No coal has been mined from any of these lands".

V.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that it was not until "Several years after patents were issued that mining operations on other lands were extend

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up to the easterly side line of the North half (1/2) of the Southeast Quarter (S. E. 1/4) of Section Eighteen (18),
1676 Township Nineteen (19) Range One Hundred and Sixteen (116), exposing a vein of merchantable coal on the east end of said eighty acres", and that "This coal, however, was not known to exist until long after the issuance of patents", and further, that "No prospecting by way of drilling or otherwise had ever been done on any of the lands for the purpose of determining whether coal might be found therein".

VI.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that the complainant had wholly rested its case upon the testimony of one Veatch, a geologist in the service of the United States Geological Survey, and that there was no other evidence or evidences going to show that there was coal known to be under the lands in question.

VII.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that the evidence clearly showed that the lands in question at the time of the entry and patent were valuable as grazing lands, or that so far as there was knowledge on the part of anyone, they were valuable alone for that purpose at that time.

VIII.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint,
1677 that under the facts proven the charge in the bill to the effect that the lands in question at the time of purchase were known coal lands and chiefly valuable as such, was wholly unsupported and entirely disapproved.

IX.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that the homestead entries proven to have been made by employes of the defendant company prior to the purchases by soldier's additional scrip of the lands in question, were no part of the transaction between complainant and those who subsequently acquired the lands under soldier's additional homestead

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scrip, and that these fraudulent acts connected with the homestead entries were no inducement to the complainant in parting with its title in consideration of the surrender of the soldier's scrip.

X.

The complainant assigns as error the action of the circuit court in adjudging in its memorandum filed with its order of May 10, A. D. 1909, dismissing complainant's bill of complaint, that the proof offered in this case wholly failed to sustain the bill, and in dismissing the same.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made thereof as is in accordance to law and the statutes of the United States in such cases made and provided; all of which is respectfully submitted.

M. C. BURCH,
Assistant to the Attorney General.

TIMOTHY F. BURKE,
United States Attorney for the District of Wyoming.
Solicitors for Complainant, United States of America.

1678 Endorsements: No. 333. Circuit Court of the United States, for the Eighth Judicial Circuit, District of Wyoming. U. S. of America, Plaintiff, vs. The Diamond Coal and Coke Company, a Corporation, Defendant. Assignment of Errors. Filed August 24, 1909. Louis Kirk, Clerk. By Charles J. Ohnhaus, Deputy. M. C. Burch, Assistant Atty. Genl. Timothy F. Burke, United States Attorney.

1679 In the Circuit Court of the United States for the Eighth Judicial Circuit, District of Wyoming.

United States of America, Plaintiff,
No. 333. vs.
The Diamond Coal and Coke Company, a Corporation, Defendant.

Citation.

United States of America, to The Diamond Coal and Coke Company, a Corporation:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an ap

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peal allowed by the United States Circuit Court for the District of Wyoming, sitting at Cheyenne, wherein the United States of America is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the United States of America as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John A. Riner, Judge of the United States Circuit Court for the District of Wyoming, this 24th day of August, A. D. 1909.

JOHN A. RINER, Judge.

Due service accepted this 27th day of August, A. D. 1909.

C. F. KELLEY, L. O. EVANS &
B. M. AUSHERMAN,
Solicitors for The Diamond Coal and Coke Company.

No. 333. Circuit Court of the United States, Eighth Judicial Circuit, District of Wyoming. United States of America, Plaintiff, vs. The Diamond Coal and Coke Company, a Corporation, Defendant. Citation. Filed Aug. 28, 1909. Louis Kirk, Clerk. By Charles J. Ohnhaus, Deputy.

1680 United States of America,
District of Wyoming—ss.

I, Louis Kirk, Clerk of the Circuit Court of the United States for the District of Wyoming, do hereby certify the above and foregoing pages, (1) to (1680), both inclusive, to be a true, correct and complete transcript and copy of the record and proceedings and of all thereof, in a certain cause lately in said Court pending, wherein The United States of America is Complainant and The Diamond Coal and Coke Company, a corporation, is defendant, as full and complete as the same still remains on file and of record in my office at Cheyenne.

Seal
U. S. Circuit Court
District of
Wyoming.

In Testimony to the above, I do hereto sign my name and affix the seal of said Court, at Cheyenne, in said District, this 25th day of September, A. D. 1909.

LOUIS KIRK, Clerk.
By Charles J. Ohnhaus, Deputy.

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1681 United States of America,
District of Wyoming—ss.

In the Circuit Court of the United States for the District of Wyoming.

The United States of America, Complainants,
No. 333. vs.
The Diamond Coal and Coke Company, a Corporation, Defendant.

Suit by Complainants to Cancel U. S. Patents to 2840 Acres of Land.

I.

The Bill charges that on January 1st, 1900, complainants were the owners of certain described lands in Uintah County, Wyoming, comprising about 2840 acres; that all of said lands were vacant, unreserved, unappropriated, and rough and broken in character and were then known coal lands, and were chiefly valuable as such; that said lands could only be legally entered and purchased in compliance with an act of Congress approved March 3rd, 1873, entitled "An Act to Provide for the Sale of Lands of the United States containing Coal;" That the defendant at all times well knew said lands were coal lands, and chiefly valuable as such, and could only be entered and acquired as coal lands; that defendant, through its officers and agents, well knowing the lands to be of the character aforesaid, entered into a fraudulent conspiracy with
1682 Thomas Sneddon and Daniel F. Harrison, to acquire said lands from the complainants under the acts of February 13th, 1862, and August 18th, 1894, known as Soldiers Additional Homestead Acts; that the defendant, in furtherance of said conspiracy, purchased through said Sneddon and Harrison soldiers additional homestead scrip; entered and purchased said lands with said scrip, thereafter obtained patents therefor in the names of said Sneddon and Harrison, and thereupon conveyed by deeds said lands to the respondent company, in violation of the acts of Congress and in fraud of the complainants' rights. The Bill thereupon prays that all of said patents be cancelled and that they have an accounting for all coal mined and taken from said lands.

The Answer denies that said lands were coal lands and chiefly valuable as such at the time of purchase; alleges that said lands were grazing lands subject to entry and purchase in the manner charged in the Bill; admits that Sneddon and Harrison entered and purchased the lands as charged in the Bill, and says that said lands were properly and legally ac-

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quired under the acts of Congress (Secs. 2304-2306 Rev. Stats. U. S.), and that at the time said lands were entered they were not known to be valuable for mineral and coal deposits, and the only known value of the lands at that time was for agricultural and grazing purposes, and were subject to entry under the Homestead Laws, and particularly the laws relating to the acquisition of title by soldiers additional homestead entries; denies that the defendant, or its officers or agents, knew that the lands or that any portion thereof were known coal lands; denies that they were coal lands within the meaning of the Coal Land Act; denies the conspiracy and confederation charged in the Bill; denies that there was any intent or purpose on the part of defendant, Sneddon or Harrison to fraudulently obtain said lands, and denies all other charges in the Bill to the effect that Sneddon or Harrison or the defendant attempted or desired to obtain the lands from complainants in any manner other than as required by the acts of
1683 Congress, and alleges that it purchased the lands from Sneddon and Harrison for a valuable consideration, and alleges that the lands, and all thereof, were legally and properly acquired, and that defendant is vested with an indefeasible title thereto. The Answer admits that defendant is engaged in mining in Uintah County, Wyoming, in the vicinity of the land described in the Bill, but denies that any of said lands are being mined for coal or that any coal has been mined from said lands.

The Evidence.

1. A map was offered in evidence showing the location of the lands in question and the outcrop of the coal vein in question easterly therefrom a copy of which follows:

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3. But other facts were adduced in evidence on which complainant's counsel appear to chiefly rest their contention for the relief prayed. And those facts are these: Some years prior to the purchase of the lands by Sneddon and Harrison a part of the lands in controversy were entered under the Homestead Act, cheap dwellings were constructed upon each entry, and the different homestead entrymen pretended to take possession and for a while live upon their respective entries, for the ostensible purpose of complying with the Homestead Act. It is insisted that the proof shows that those homestead entrymen made their entries and took possession under hire from the defendant, with an agreement to obtain patent for
1688 the use and benefit of the defendant and to thereafter convey their respective entries to the defendant; that the buildings so constructed thereon were made at the expense of the defendant, from lumber furnished by the defendant, and that thereafter the defendant, in recognition of its obligations to said entrymen, paid them monies in discharge thereof. But the proof further shows conclusively and without contradiction that none of these homestead entries went to patent, but that they were all relinquished by the entrymen to complainants. The defendant contends that these entries were not made under its direction or for its benefit. Such conduct on the part of defendant, if true, would have been a fraud on the government and title taken by any one with knowledge of such facts would have been invalid as against complainants. Inasmuch, however, as all such entries were subsequently released and cancelled and purchase of the lands thereafter made under soldiers' additional homestead scrip, it is unnecessary to consider such testimony and determine the character of such transactions as to whether they be fraudulent or otherwise, and whether or not the defendant was a party thereto, if fraudulent. Such acts became no part of the transaction between complainants and those who subsequently acquired the lands under soldiers' additional homestead scrip. These fraudulent acts, if fraudulent, were no inducement to the complainants in parting with their title in consideration of the surrender of the soldiers scrip. Fraud without damage is not actionable.

Ming vs. Woolfolk, 116 U. S. 599.
Marshall vs. Hubbard, 117 U. S. 415.
2 Pomeroy's Equity Jurisprudence, Secs. 879, 880, 890.

In Chitty on Contracts, (11th Am. Ed.) Vol. 2, page 1036, it is said: "But a court of equity will not rescind a con-

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tract on the ground of fraud—unless it appear that the
1689 contract was based on the misrepresentations complained of." To which principle many cases are cited.

The proof wholly fails to sustain the Bill. It will therefore be dismissed. It is so ordered.

ROBT. E. LEWIS,
District Judge.

Endorsements: No. 333. U. S. vs. The Diamond C. & C. Co. Memo. Opinions. Filed May 10, 1909. Louis Kirk, Clerk.

Filed Oct. 15, 1909. John D. Jordan, Clerk.

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(*Appearance of Counsel for Appellant.*)

On the eleventh day of November, A. D. 1909, the appearance of counsel for appellant was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 3286.

THE UNITED STATES OF AMERICA, Appellant,
vs.
THE DIAMOND COAL AND COKE COMPANY.

The Clerk will enter *my* appearance as Counsel for the Appellant.

MARSDEN C. BURCH,
Spec'l Ass't to Att'y Gen'l,
Dep't Justice, Washington, D. C.
TIMOTHY F. BURKE,
U. S. Att'y, Dist. Wyo.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3286. The United States of America, Appellant, vs. The Diamond Coal and Coke Company. Appearance. Filed Nov. 11, 1909. John D. Jordan, Clerk. Marsden C. Burch, Timothy F. Burke, Counsel for Appellant.

(*Appearance of Counsel for Appellee.*)

And on the twenty-fourth day of June, A. D. 1910, the appearance of counsel for appellee was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 3286.

UNITED STATES OF AMERICA, Appellant,
vs.
THE DIAMOND COAL AND COKE COMPANY, a Corporation.

The Clerk will enter *my* appearance as — for the Appellee.

C. F. KELLEY,
Butte, Mont.
L. O. EVANS,
Butte, Mont.
B. M. AUSHERMAN,
Evanston, Wyo.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3286. United States of America, Appellant, vs. The Diamond Coal and Coke Co. Appearance. Filed Jun- 24, 1910. John D. Jordan, Clerk. C. F. Kelley, L. O. Evans, B. M. Ausherman, Counsel for Appellee.

(*Order of Argument.*)

And on the twentieth day of September, A. D. 1910, in the record of the proceedings of said Circuit Court of Appeals is an order of argument in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1910.

No. 3286.

UNITED STATES OF AMERICA, Appellant,
vs.
THE DIAMOND COAL AND COKE COMPANY.

Appeal from the Circuit Court of the United States for the District of Wyoming.

TUESDAY, *September* 20, 1910.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Timothy F. Burke for appellant, continued by Mr. L. O. Evans and Mr. C. F. Kelley for appellee, and the hour for adjournment having arrived further argument is postponed until tomorrow.

(*Order of Submission.*)

And on the twenty-first day of November, A. D. 1910, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1910.

No. 3286.

UNITED STATES OF AMERICA, Appellant,
vs.
THE DIAMOND COAL AND COKE COMPANY.

Appeal from the Circuit Court of the United States for the District of Wyoming.

WEDNESDAY, *September* 21, 1910.

This cause having been called for further hearing, argument was continued by Mr. C. F. Kelley for appellee and concluded by Mr. Marsden C. Burch for appellant.

Thereupon, this cause was submitted to the Court on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(*Opinion.*)

And on the twenty-first day of November, A. D. 1911, the opinion of the United States Circuit Court of Appeals for the Eighth Circuit was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1911.

No. 3286.

UNITED STATES OF AMERICA, Appellant,
vs.
THE DIAMOND COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the Circuit Court of the United States for the District of Wyoming.

Mr. Timothy F. Burke, United States Attorney, and Mr. Marsden C. Burch, Special Assistant to the Attorney General, for the appellant.

Mr. L. O. Evans and Mr. C. F. Kelley (Mr. B. M. Ausherman was with them on the brief), for the appellee.

Before Van Devanter and Hook, Circuit Judges, and Carland, District Judge.

HOOK, *Circuit Judge*, delivered the opinion of the court.

This is a suit by the Government to cancel patents issued to Thomas Sneddon and Daniel F. Harrison and their subsequent deeds to the appellee the Diamond Coal and Coke Company, for about 2,840 acres of land in Uinta County, Wyoming. The ground of the suit is that Sneddon and Harrison at the instance and instigation of the company and for its benefit fraudulently procured the patents from the United States by false affidavits and representations that the lands were non-mineral agricultural lands containing no deposits of coal and were therefore subject to entry under the homestead laws, whereas in truth they were known to be mineral in character, contained large deposits of coal, were chiefly valuable as such and were not subject to acquisition in the manner adopted by the company and its agents. Upon final hearing the trial court dismissed the Government's bill and this appeal followed.

The entries of the lands were made by Sneddon and Harrison with soldiers' additional homestead rights, which being transferable under the acts of Congress had been purchased by the company. The acquisition of "coal lands of the United States" had long been the subject of special statutory restrictions as to the persons who

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were entitled to purchase, the quantity which might be purchased and the price to be paid (Rev. Stat. sec. 2347, 2348, 2350). The details of these restrictions need not be set out. It is sufficient to say that coal lands were not subject to homestead entry and if the lands in controversy were of that character neither the company nor Sneddon and Harrison could in any lawful way have acquired from the Government such a quantity nor indeed any except a limited amount by purchase at a minimum cost of ten or twenty dollars per acre according to proximity to a completed railroad. Sneddon and Harrison as preliminary to each entry were required to make and did make affidavit of their personal knowledge, not upon information and belief, as to the character of the lands involved. Upon these affidavits the government officials acted. Each of the entrymen swore that he was well acquainted with the character of the land described, having frequently passed over it, that his personal knowledge of the land was such as to enable him to testify understandingly with regard to it, that there was not to his knowledge within its limits any vein or lode of certain specified minerals "or any deposit of coal," that it was "essentially non-mineral land" and that his application was "not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes." The proofs show conclusively that although the company in purchasing the soldiers' additional homestead rights, paid therefor at the rate of from six to thirteen dollars per acre, the lands upon which they were located were almost worthless for agricultural purposes. They were in a rough, broken and mountainous country, unfenced, unfarmed, and of a character known as "sage brush and alkali land" for which water for irrigation purposes was difficult if not impossible of procurement. For grazing purposes the lands were worth not to exceed a dollar per acre. There was substantial testimony that the value did not exceed half that sum. The lands lie along the slope and in the valley west of what is known as Oyster Ridge, a range of hills about forty miles in length and of an elevation of about seven thousand feet above sea level. About half way down the western slope of the ridge there was an outcrop of veins of coal the line of which extended in a northeasterly and southwesterly direction for a distance of many miles. The outcrop, though weathered down in places and in others covered by the wash from above, was well defined and traceable. The largest vein appearing at the outcrop was from 6 to 14 feet in thickness and was of a high commercial grade of coal. It dipped in sheet or blanket formation to the westward at an angle varying from 15 to 30 degrees. All of the lands in controversy are west of the line of outcrop and lie above the plane of the dip of the vein. Some of them approach to within a few hundred feet of the outcrop. The others are of varying distances, the east line of the most westerly section being less than a mile and a half away. A valley three or four miles in width separates Oyster Ridge from another range of hills in which is probably the largest vein of coal in the United States. It is, however, of lignite and of no commercial value at present. It is re-

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ferred to here simply to illustrate further the general character of the country. Most of the applications for entries by Sneddon and Harrison were made in three days in May and June, 1899. The others were made in subsequent years when the character and value of the lands were even more apparent. About twenty-five years previously, when the survey of the west slope of Oyster Ridge was made, coal was encountered in places where the lines were run. For many years prior to the entries in 1899 the lands along the ridge and in the valley west of the outcrop were generally regarded as coal lands by people living in that section of Wyoming. Such was their general reputation. As early as 1887 people attracted by the evidences of coal began making cash coal entries upon lands west of the line of outcrop. Many coal declaratory statements were also filed, some as early as 1882, though few, if any of them, proceeded to final entry. In 1898, the year prior to the location of the soldiers' additional homestead rights upon the lands in controversy, Sneddon, then in the service of the defendant company, suggested to a county official that they have lands in that immediate locality taken up by homesteaders and then sell them to some coal company. He believed there was coal in the land and that money could be made by the venture. In April, 1898, Sneddon, who had investigated the land and knew of the coal outcrop, caused a survey to be made locating the section corners and lines of lands and the lines run embraced part of those in controversy. When this was done he was with the surveyors most of the time and by his direction particular attention was given to the presence of coal and to the running of lines to include it. A few days afterwards Sneddon said to the chainman at the survey that he wished to acquire certain indicated parcels of the "coal land" "before the Cumberland people could get it" and that "they would put some homestead entries on them in order to keep the Cumberland people from getting them." The Cumberland people, so-called, owned coal properties south of the lands of defendant and those in controversy. On March 28, 1898, Sneddon filed in the land office a sworn statement declaring his intention to purchase under the laws of the United States relating to the sale of coal lands a tract of 160 acres the south east corner of which is but little more than a quarter of a mile from the line of the coal outcrop. He swore that he took possession of the land October 1, 1897, and that it contained large deposits of coal and was chiefly valuable therefor. But this method of getting title was abandoned. Sneddon afterwards secured a patent from the United States for the benefit of his company by locating a soldier's additional homestead right thereon and making the non-mineral affidavit that there was not to his knowledge within the limits of the land any deposit of coal and that his object was to secure "said land for agricultural purpose." Counsel for the company contend that Sneddon's first or cash entry was due to an error in the description of the land and for proof they refer to the testimony of two witnesses whom they name. But these witnesses said they knew nothing about it, and Sneddon did not testify, although shown to be an officer of the company at the time. This tract of

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land is one of those in suit and not long afterwards the company located its mining town but little more than a quarter of a mile away.

About the time Sneddon and Harrison made most of the locations which are being attacked, possibly in August, 1899, one James Lees made a cash coal entry on a quarter section near the south end of the land in controversy. There was an eight foot vein of coal on it. The purchase price from the Government was $3,200.00, and by a deed dated August 26, 1899, Lees conveyed the land to the defendant company for the recited consideration of $3,400.00. The line of coal outcrop runs through this land. A corner of an entire section in controversy is a half mile north of it and on the south and west are two eighty acre tracts as near. In 1894, five years before the entries in controversy were made, the defendant company commenced mining on the outcrop north of the lands in suit. Official reports by public officers show a small output for the years 1894 and 1895. No report appears for the year 1896, but for 1897 it showed 183,000 tons; 1898, 259,000 tons; and 1899, the year in which the entries in question were made by Sneddon and Harrison, 441,000 tons.

Supplementing the external evidences of an underlying body of coal in substantial measure and of commercial quality and value is the testimony of a geologist connected with the Geological Survey as to the geological formation of the immediate surrounding country and the significance of external appearances. This testimony is criticised by counsel for the company but an intelligent, scientific reading of such things in connection with an actual mineral outcrop is frequently all there is preceding extensive investment, and practical men are accustomed to rely upon it in their enterprises. Following fast upon the acquisition of the lands in suit as agricultural lands came the development of the country as a coal bearing section. Before the testimony in this case was taken three companies had opened up and operated nine mines on twenty miles of the line of outcrop. To the northward were three mines of the Kemmerer Coal Company, then three of the defendant, and at the south three Cumberland mines, so-called, of the Union Pacific Coal Company, the most important concern of its kind in Wyoming. The mines of each group were approximately from a mile and a half to two and a half miles apart. Two and a half miles intervened between the south Kemmerer mine and the north mine of defendant, and six miles between defendant's south mine and the most northerly Cumberland. This last mentioned mine was worked up to the very line of the most southerly of the tracts of land in controversy where, when further progress in that direction was barred, the vein of coal disclosed was from ten to fifteen feet in thickness. Millions of tons of coal have been taken from these mines. There were times in which they were producing over 8,000 tons per day. The defendant reported to a state board an output from its mines of 528,000 tons for the year 1905. In the winter and spring of 1900-1901 a railroad eighteen miles in length was constructed from a connection with the Oregon Short Line southward to serve the

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Cumberland mines. We need not stop to define the precise limit of the bearing of these subsequent operations and developments as evidence upon the question whether the lands in suit were coal lands when they were acquired from the United States as agricultural.

The defendant gives a number of reasons for its position that the lands in suit are not coal lands. It says, which is true, there is no evidence upon their surface of coal contents. The long line of outcrop lies to the eastward. It also says that the only way to determine with the certainty required by law is to explore with a drill and that has not been done. One of defendant's principal witnesses testified that in the absence of an actual outcrop of coal a tract of land should be laid out in thousand foot squares and a hole drilled with a diamond drill to the requisite depth at each corner. He also said that in the case here the cost would be prohibitive. His contention was, and it is substantially that of defendant, that land cannot be regarded as coal land unless coal is actually exposed naturally or artificially. In other words, at the time it is acquired from the United States there must be either a natural outcrop or an actual disclosure by the work of man. Visible evidences of coal veins upon adjacent lands and geological probabilities, however strong, as to the lands in question, will not suffice. We have already referred to the most southerly of the tracts in suit and to the fact that the workings in one of the Cumberland mines drove up to the line of it and stopped in a vein of coal ten or more feet thick. Concerning this the witness mentioned testified that should the Cumberland drift or incline be in good coal up to three inches of the property line the land beyond should not be called coal land—this, because of the possibility of a barren coal measure behind the three inch intervening wall. It is also contended that even if the veins of coal shown at the outcrop were known to be continuous on their downward dip to the west it would be impracticable for anyone who did not own the outcrop to mine under most of the lands in suit; also, even with ownership of the outcrop, the depth by following down the angle of the dip would be too great for mining. Again it is said the lands are not in a solid body but are too small and too widely separated for profitable mining. This argument was applied by one of defendant's witnesses to the most southerly of the tracts in suit. It contains eighty acres, and though the Cumberland workings showed almost with certainty that it contains a large body of coal, it is about a thousand feet away from the line of outcrop. So it was said the tract was too small to justify mining through vertical shafts sunk on the land itself, and to mine by means of an incline from the outcrop involved either trespass or an arrangement with another coal company which owned the intervening land. Three of the tracts in controversy are entire sections; the smallest, two in number, contain eighty acres each, and they connect at corners. Finally it is urged that the coal veins lack continuity both on their strike and their dip and that it cannot be told in the absence of actual exploration that there is coal under any particular piece of land in quantity or quality to justify mining. There are "wants" in the line of outcrop, that is to say, an

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absence of coal from the bed or measure where it should be found, some extending considerable distances. Similar barren areas are found in the underground workings of the mines, also places where the coal veins are thin, others where interstratifications and impurities occur and where the roof or floor between which the coal lies is of a character to impede or prevent mining. All the uncertainties and difficulties of mining in this field are pointed out. Indeed, as urged they amount to a condemnation in general of the practical value of the coal deposits of the west, which being found in cretaceous formations instead of belonging to the older carboniferous geological epoch as those of Pennsylvania and other eastern states, are said to be much more irregular and less uniform and continuous. Yet if the acts of Congress are to have application to the extensive coal deposits in the western mountainous regions outside the very land in which they outcrop and without exploration by the Government by diamond drill at excessive if not prohibitive cost, there must be a more liberal view than that advanced in this case by defendant. It would be anomalous if lands could be acquired from the United States as non-mineral, agricultural lands and at once be held, dealt in, and sold upon the basis of a coal bearing character resting upon satisfactory proof. The construction of the old statutes exempting "known mines and salines" from homestead entry and pre-emption has little bearing here. The terms "mineral lands," "lands valuable for minerals" and "coal lands" which were later engrafted upon the body of laws relating to the public lands have a broader meaning. The purpose of Congress is manifest to withdraw from disposition except under particular restrictions those limited areas of the public domain which in general opinion based upon substantial evidence have a special value for mineral contents beyond that arising from their adaptation to agricultural or other like uses.

True, the mineral character of the land must be known at the time of the grant, and the mineral must be in such quantities as to justify exploitation (Davis' Admr. v. Weibold, 139 U. S. 507); but that does not means a positive, absolute certainty which can only be shown by actual exposure or uncovering, nor that temporary distance from market makes unprofitable the mining of any but a very thick vein or deposit. In the first place, regard should be had to the proof of which the subject by its nature is susceptible, and that proof certainly comprises visible exposure of outcrop, the dip of vein and surrounding geological conformations. Veins of precious minerals are notoriously more uncertain in extent, continuity and uniformity than deposits of coal, but it could hardly be said that one might acquire by homestead entry land adjacent to a valuable mining claim and towards which a known vein of gold or silver dipped upon the supposition that the vein might "pinch out" or become unprofitable to follow. Again, Congress considered distance from market and all which that implies by its gradation of prices of coal lands according to distance from railroads.

We have here an extensive coal deposit of commercial value, the outcrop line, though barren in places, being easily traced or

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discoverable. The dip of the coal veins was known. Surrounding geological formations showed that though subject to "wants" and irregularities they extended under the lands in question. The lands were of little agricultural value, but they had a much greater value because of the belief in their coal contents founded on evidences upon which men in the business were accustomed to rely. We think the lands were coal lands within the laws of the United States and that defendant sought to acquire them as such. Defendant gives as a reason for its acquisition of the lands at a cost many times their value for agricultural or grazing purposes, that it is important in coal mining on a large scale to have as much of the surrounding property as possible for townsites, railroads, etc., and that it is not desirable to have others located in proximity to its operations. But this reason is not persuasive. It does not adequately explain the coincidence that all the tracts in question lie west of the known line of coal outcrop, over the veins on their westward dip, and that they follow the direction of the outcrop north and south for a distance of nearly seven miles.

Considerable evidence was received of fraudulent homestead entries of the lands in controversy made at the instance of the defendant in 1898, the year prior to the location of the soldiers' additional homestead rights under which it finaly obtained patents. The circumstances connected with them may properly be considered not as directly invalidating the patents now held but as evidence of a purpose to acquire the lands by illegal methods. The entries of 1898 connect with the entries of 1899 in point of time. The former were relinquished at defendant's instance and most of the latter were immediately made. This matter, in more detail, is as follows: Shortly after the survey of part of the lands at the instance of Sneddon in the spring of 1898 and running into July of that year homestead entries were made covering at least eight hundred acres of the land in controversy, some of which were by employés of the defendant. The lands embraced in other like entries were not identified in the evidence but were in that immediate region. The direct and circumstantial evidence and the deductions reasonably to be made show we think beyond all question that Sneddon instigated this homestead movement for the defendant and that it was intended for its benefit and advantage. We do not overlook the fact that there was a short interval during which he was not in defendant's service. Just when it was does not clearly appear but the interest of defendant in the homestead entries is shown beyond reasonable doubt. Shortly after the entries were made small frame cabins of cheap construction were built without cost to the entrymen. In some instances the lumber and other building materials came from defendant's store; in others it was not shown where they came from but the entrymen did not know who furnished or paid for them. One contractor built a number of cabins when he found the lumber piled and received his compensation from defendant's cashier at its office. Such testimony as there was shows that the entrymen did not reside on their lands. A particular instance of this is the case of Gove, the chainman at Sneddon's survey

Sneddon asked him if he would take a homestead and he said he would. Shortly afterwards, at Sneddon's suggestion, he went to the land office with others and filed his declaratory statement. His expenses and the land office fees were paid by a man who Sneddon said would attend to them. The land Gove entered is part of that in controversy and is in the section furthest removed from the line of coal outcrop. A house was built on his claim but he did not know who paid for it. He slept in the house two nights: once when caught in a storm and once when hunting. Some time afterwards an attorney acting for defendant told him the company wished him to relinquish his claim. He went to Burrell, the general manager, verified what the attorney told him, and signed a relinquishment. Later he was paid $500 by a check of the defendant. There is considerable testimony that at first it was understood the entrymen were to receive nine dollars per acre for the land, and some testified directly that the defendant was to pay it. Burrell, the general manager and Sneddon's superior, knew of and participated in some of the transactions. Sneddon finally informed some of the entrymen that their entries were invalid and he advised them to relinquish them. They did so and soldiers' additional homestead rights were at once used by defendant in acquiring title. Under these settlement and residence on the lands were not required. A number of entrymen were afterwards paid by defendant $500 each; in one case $600. There is unmistakable proof that the homestead venture of 1898 was an illegal device for the purpose of either holding the lands temporarily or fraudulently securing title for the benefit of the company, and if the latter the attempt was abandoned when other means of getting title were at hand. In all the cases the homestead entrymen were required to swear that the lands were non-mineral. In some instances those who testified substantialy admitted they swore falsely. In others they relied upon the absence of surface indications of coal contents. As we have said there was such a connection between this attempt, though abandoned, and the later effort that the former may be regarded as evidence of a purpose persisted in to acquire the lands fraudulently.

The decree is reversed and the cause is remanded with direction to enter one for the complainant as prayed for.

Filed November 21, 1911.

(*Decree.*)

And on the twenty-first day of November, A. D. 1911, in the record of the proceedings of said United States Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1911.

No. 3286.

UNITED STATES OF AMERICA, Appellant,
vs.
THE DIAMOND COAL AND COKE COMPANY, a Corporation.

Appeal from the Circuit Court of the United States for the District of Wyoming.

TUESDAY, *November* 21, 1911.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Wyoming, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, reversed without costs to either party in this Court.

It is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree for the complainant as prayed for.

November 21, 1911.

(*Petition for Appeal to Supreme Court, U. S.*)

And on the fifteenth day of January, A. D. 1912, a petition for appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

No. 3286.

THE DIAMOND COAL AND COKE COMPANY, a Corporation, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Petition for Appeal.

The above mentioned appellant, Diamond Coal and Coke Company, a corporation, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit, and that a judgment has therein been rendered on the 21st day of November, A. D. 1911, reversing the decree of the Circuit Court of the United States, Eighth Circuit, for the District of Wyoming, and ordering said cause remanded to said Circuit Court with directions to enter a decree in favor of the above named ap-

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pellee, The United States of America, complainant in said Circuit Court, as prayed for in said complainant's bill of complaint; and that the matter in controversy in said suit exceeds One Thousand Dollars ($1,000.00) besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Eighth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellant prays that an appeal be allowed it in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, to send the record and proceedings in said cause, and all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellant, may be reviewed, and if error found, be corrected according to the laws and customs of the United States.

B. M. AUSHERMAN,
Of Evanston, Wyoming;
C. F. KELLEY AND
L. O. EVANS,
Of Butte, Montana, Attorneys and of Counsel for the Appellant, Diamond Coal and Coke Company.

(Endorsed:) No. 3286. United States Circuit Court of Appeals for the Eighth Circuit. The Diamond Coal and Coke Company, a corporation, Appellant, v. The United States of America, Appellee. Petition for Appeal to Supreme Court, U. S. Filed Jan. 15, 1912. John D. Jordan, Clerk. C. F. Kelley, L. O. Evans, W. B. Rodgers and D. Gay Stivers, of Butte, Montana, Attorneys and of Counsel for Appellant, Diamond Coal and Coke Company.

(*Assignment of Errors on Appeal to Supreme Court, U. S.*)

And on the fifteenth day of January, A. D. 1912, an assignment of errors on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

No. 3286.

THE DIAMOND COAL AND COKE COMPANY, a Corporation, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

The Diamond Coal and Coke Company, the appellant in the above entitled cause, in connection with its petition for appeal to the Supreme Court of the United States herein, presents and files there-

: IN CENTER

with its assignment of errors, as to which matters and things they say that the decree entered herein by the said United States Circuit Court of Appeals, Eighth Circuit, on the 21st day of November, A. D. 1912, is erroneous, and that the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to wit:

1. In holding and deciding that the decree theretofore entered in said cause by the Circuit Court of the United States, Eighth Circuit, District of Wyoming, in favor of the said Diamond Coal and Coke Company, and against The United States of America, or any part thereof, should be reversed or the said cause remanded to said Circuit Court with directions to enter a decree therein in favor of said United States of America, as prayed in its bill of complaint.

2. In not holding and deciding that the said decree, and each and every part thereof, theretofore entered in said case by the Circuit Court of the United States, Eighth Circuit, District of Wyoming, should be affirmed.

3. In holding and deciding that all or any part of the lands in controversy herein, being the lands described in the bill of complaint of the said United States of America, complainant herein, were, from the first day of January, 1900, or at any time subsequent thereto, or at any of the times when the same were applied for, entered or patented to the predecessors in interest of this appellant, vacant, or unreserved or unappropriated lands, or were rough or broken in character, or unfitted for agricultural purposes, or of slight utility for grazing; whereas, the evidence in the cause shows that each and all of the said lands were level and well fitted for grazing and agricultural purposes.

4. In holding and deciding that at the times of the applications for patents therefor, or the entries thereof, or the issuance of patents therefore to the predecessors in interest of this appellant, all or any of the said lands described in the bill of complaint were known coal lands or coal lands at all, or were largely or chiefly valuable as coal lands, or had any value as coal lands, or were of the value, for any purpose whatsoever, in excess of the sum of Ten Thousand Dollars ($10,000).

5. In holding and deciding that any of the lands described in the bill of complaint, and in controversy herein were, at the time of the applications for patents therefor, or the entries thereof, or the issuance of patents thereon, or at any other time, or at all, valuable for any coal found or that might be found therein, or that any of the same, at any of the said times, were coal lands or known to be such; whereas, the evidence in this case shows conclusively that at the time each and all of said tracts of land were applied for and entered and patented, no coal had been discovered upon any of the same, or was known to exist within the same, and the said lands at each and all of said times were shown to be agricultural in character under all of the evidence in the case and under the classification of the public lands as determined by the Land Office of the United States, and by the courts thereof.

6. In considering and acting upon any evidence of developments, which had not been made, or conditions which did not exist, until

after the applications for patents, or the entries or the issuance of patents for the lands in controversy. The character of the lands in controversy must be determined by conditions existing at or prior to the time of applications to purchase the same from the United States government. There is no evidence whatsoever upon this record of the existence of any coal beneath any of the lands in controversy even at the time of the taking of evidence, except as to the north one-half of the south-east one-quarter, Section eighteen (18), Township nineteen (19) North, Range one hundred and sixteen (116) West, and as to this particular tract of land, the only testimony showing, or tending to show, that any coal existed therein was upon developments made from the mine of another concern than that of the appellant, to which the appellant had no access nor means of acquiring information as to the conditions disclosed, and which development the testimony shows was not made until a period of more than six years subsequent to the issuance of the patent to the appellant for the tract of land.

7. In holding and deciding that the only manner in which all or any of the said lands described in the bill of complaint could be legally or at all purchased from the United States of America, was through compliance with an Act of Congress entitled "An Act to provide for the sale of lands of the United States containing Coal," approved March 3, 1873, and in part found in the Revised Statutes of the United States, Sections 2347, 2348 and 2350 thereof, or that the same could only be properly or legally entered or purchased under any coal or mineral land act of the United States.

8. In holding and deciding that all or any of the lands in controversy herein could not be legally purchased from the United States of America under the Homestead or Pre-emption or other Acts of the Congress of the United of America, providing for the sale and disposition of agricultural lands.

9. In holding and deciding that any of the lands in controversy herein, and described in the bill of complaint, at the time of application for, or entry thereof, or issuance of patent therefor, to the predecessors in interest of this appellant, were not properly and legally applied for, entered and patented under Soldiers' Additional Homestead scrip; it being shown conclusively by the evidence in this case that under the classifications of public lands, at each and all of said times, laid down and determined by the United States of America, and by its Land Office, and by its laws and decisions of the courts, that the said lands were agricultural in character and properly applied for and entered as such, and that none of the same were subject to entry or purchase or patent under any of the coal land or other mineral land laws of the United States.

10. In holding and deciding that any of the officers, directors or agents of this appellant, or this appellant, or Thomas Sneddon or Daniel Harrison, or any of them, knew, or could or should have known, that any of the lands in controversy in this action were known or other coal lands in character, or valuable as such.

11. In holding and deciding that at any time there was any conspiracy or combination or confederation between the said Thomas

Sneddon or Daniel F. Harrison, or any of the officers or directors, agents or employés of this appellant, or any persons whomsoever, or this appellant, for the purpose of fraudulently or at all securing title to or possession of any of the lands described in the bill of complaint, or for any other purpose, or for the purpose of misrepresenting the character of the lands in controversy, or of obtaining the same from the United States of America, in any way not strictly in accordance with the laws of the United States and the regulations of the Land Office, in force.

12. In holding and deciding that Thomas Sneddon and Daniel F. Harrison, or either of them, who obtained titles from the government to the lands in controversy in this action did, for any fraudulent purpose whatsoever, make any affidavit in connection with the application for, or entry of any such lands, or that the said Sneddon and Harrison, or either of them made any false or fraudulent affidavits in connection with the application for, or entry of, said lands under Soldiers' Additional Homestead scrip or otherwise, and in holding and deciding that the affidavits made by the said Sneddon and Harrison, in connection with the placing of additional homestead scrip upon the lands in controversy in this action and in obtaining title to said land from the government, were not in all respects true and correct, and that any part of said affidavits was not made in absolute good faith.

13. In holding and deciding that the officers of the United States Land Office at Evanston, or the General Land Office at Washington, or the Interior Department, or any officers or representatives therein, or any persons whomsoever, were in any way deceived or misled by the said Harrison or Sneddon, or anyone else, by affidavits or otherwise, as to the character of the said lands, or as to the same being agricultural or grazing in character, and not coal lands; on the contrary, the evidence clearly shows that the said lands were at all times agricultural and grazing in character, and not coal lands, and that the same were so classified by the officers of said Land Offices and the Interior Department, and were known to be such by all of such officers and representatives.

14. In holding and deciding that any of the lands in controversy in this action were by the said Daniel F. Harrison or the said Thomas Sneddon conveyed to this appellant without consideration, or that the considerations paid for the same were purely nominal, and that this appellant was not a purchaser of said lands in good faith for a valuable consideration, or that this appellant received said lands with full or any notice or knowledge that the said lands were coal lands in character, or had been obtained from the United States of America in fraud or violation of its laws or against any of its rights as alleged in the bill of complaint in this action, or otherwise.

15. In holding and deciding that any of the lands in controversy in this action are geographically intermingled with other lands owned or operated by this appellant.

16. In holding and deciding that there was any fraud or deceit of any character whatsoever intended or attempted or practiced upon

the government of the United States or upon its Land Office or Interior Department, or any of its officers or representatives in the placing of Soldiers' Additional Homestead scrip upon the lands in controversy in this action, and the obtaining of title thereunder from the United States of America, as it affirmatively appears from the evidence that the law in this case that all of said lands at the time of application to purchase and entry, and the issuance of patents therefor, or any other time or at all, were not coal lands or valuable or known to be valuable for such or subject to entry under the coal land or other mineral land acts of the United States; but that the same and the whole thereof were at all times properly purchaseable from the United States as agricultural lands, and were properly and in good faith entered and purchased from the government under the laws pertaining to the entry of non-mineral public lands of the United States.

17. In holding and deciding that this appellant, in purchasing the additional Soldiers' Homestead rights and scrip, under which the said lands were entered, paid therefor at the rate of from $6.00 to $13.00 per acre.

18. In holding and deciding that any of the lands in controversy were of a rough, broken character, or in a mountainous country, or of a character known as sage brush or alkali land; or that for grazing purposes the lands were worth not to exceed $1.00 per acre; whereas, the evidence conclusively shows that said lands were good grazing lands, and were being used as such, and of a value largely in excess of $1.00 per acre, and with water thereon for irrigation, would be splendid agricultural lands, and that the placing of water thereon would not be a matter of great difficulty.

19. In holding and deciding that in 1898, or at any other time, Thomas Sneddon, while in the service of the appellant company, or otherwise, suggested to a county official, or any other person whomsoever, that they have lands in that immediate locality taken up by homesteaders and sell them to some coal company, or that he said he believed there was coal in the lands, and that money could be made on the venture; or in holding and deciding that in 1898, at the time such conversation is claimed to have occurred, the said Thomas Sneddon was in the service of or connected in any way with the defendant company.

20. In holding and deciding that Thomas Sneddon had any knowledge prior to the issuance of patents for any of the lands in controversy, that the same were coal land or valuable for such, or that by his direction, in April, 1898, surveys were made of said lands, or particular attention given to the presence of coal, or the running of lines to include it.

21. In holding and deciding that the said Thomas Sneddon at any time said to the chainmen of a surveying party, or any one else, that he wished to acquire certain indicated parcels of coal land before the Cumberland people could get it, or that he, or any one else, would put homestead entries on such lands in order to keep the Cumberland people from getting them.

22. In holding and deciding that the coal or cash entry for one

hundred and sixty acres of land, which was abandoned and relinquished to the government by the said Sneddon was not due to an error as to the location of the land; whereas, the evidence conclusively shows that the said coal or cash entry was made in error and in the belief that lands upon the coal outcrop were being entered, and that when the mistake was discovered the said entry was relinquished and abandoned.

23. In holding and deciding that the pre-emption and other statutes excepting known mines and salines from homestead pre-emption entries have little, if any, bearing on the questions in controversy in this case, and in failing to apply the settled rules as to classification and determination of the character of lands for the purpose of the purchase from and sale by the government of the United States, to the facts in this case.

24. In holding and deciding that there was any intent in connection with the acquisition of any of the lands in controversy, in this action from the government, to acquire the same because of any known or other value as coal lands, or for any other purpose than as indicated in the applications for the same, and for such surface value as the said property might have for agricultural and grazing purposes, and for townsite and other surface purposes in connection with the operations being carried on by this appellant.

25. In holding and deciding that there was any evidence whatsoever of fraudulent homestead entries upon any of the lands in controversy, made at the instance of this appellant, or with which this appellant was in any way connected, or that such evidence of fraudulent homestead entries applied to any but a very few of the tracts in controversy in this action, or that any of the acts of Thomas Sneddon in connection with such homestead entries, or any of them, were for this appellant or its benefit or advantage, or done as an agent of this appellant.

26. In holding and deciding that any of such homestead entries was an illegal device, either for the purpose of holding the lands temporarily, or fraudulently securing title for the benefit of this appellant or any of its representatives or agents, or that this appellant had anything to do with the same.

27. In holding and deciding that any of the affidavits made by any of said homestead entrymen, in connection with such prior homestead entries as to the non-mineral character of the land, was false in any way; on the contrary, the evidence conclusively shows that all of such affidavits as to the non-mineral character of the land, and as to its agricultural and grazing character, were true.

28. In holding and deciding that there was any connection between such homestead entries and the later filings upon and obtaining title to said lands under additional homestead scrip.

29. In holding and deciding that any evidence in connection with such prior homestead entries should be or can be regarded in this case as material evidence for any purpose, especially as evidence of any fraudulent purpose on the part of this appellant, or any of its representatives and agents, to acquire the lands fraudulently.

30. In holding and deciding that any evidence in connection with

such prior homestead entries had any connection with, or bearing upon, the applications for entries of, and the subsequent issuance of patents to the lands in controversy in this action, under the Soldiers' Additional Homestead scrip, through which the said lands were obtained.

31. In holding and deciding that the United States of America, complainant below, is entitled to any decree whatsoever, cancelling or annulling any of the patents or entries for any of the lands in controversy in this action.

32. In holding and deciding that the complainant below, The United States of America, is entitled to any decree as against this appellant, for any accounting in connection with or for a recovery or damages in connection with any of the lands in controversy in this action.

33. In holding and deciding that the complainant below, The United States of America, is entitled to any relief whatsoever, or any decree against this appellant, as prayed in the bill of complaint herein, or otherwise.

Wherefore, this appellant prays that said judgment and decree of said Circuit Court of Appeals, Eighth Circuit, be reversed; and that this appellant may have an adjudication and decree in its favor dismissing complainant's bill of complaint as herein specified.

B. M. AUSHERMAN,
Of Evanston, Wyoming,
C. F. KELLEY AND
L. O. EVANS,
Of Butte, Montana,
Attorneys and of Counsel for Appellant,
Diamond Coal and Coke Company.

(Endorsed:) No. 3286. United States Circuit Court of Appeals for the Eighth Circuit. The Diamond Coal and Coke Company, a corporation, Appellant, v. The United States of America, Appellee Assignment of Errors on Appeal to Supreme Court, U. S. Filed Jan. 15, 1912, John D. Jordan, Clerk. C. F. Kelley, L. O. Evans, W. B. Rodgers and D. Gay Stivers, of Butte, Montana, Attorneys and of Counsel for Appellant, Diamond Coal and Coke Company.

(*Bond on Appeal to Supreme Court U. S.*)

And on the fifteenth day of January, A. D. 1912, a bond on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

No. 3286.

THE DIAMOND COAL AND COKE COMPANY, a Corporation, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Bond on Appeal.

Know All Men By These Presents: That we, The Diamond Coal and Coke Company, a Utah corporation, having its principal place of business at Salt Lake, Utah, as Principal, and the Equitable Surety Company, a Missouri corporation, having its principal offices in the City of St. Louis, State of Missouri, as Surety, are held and firmly bound unto The United States of America, in the sum of Ten Thousand ($10,000.00) Dollars, to be paid to the said United States of America, for the payment of which to the said United States of America, we bind ourselves and our, and each of our, successors, jointly and severally firmly by these presents.

Sealed with our seals, and dated this Fifteenth day of January, A. D. 1912.

Whereas, the Diamond Coal and Coke Company, the appellant in the above entitled suit, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in the Circuit Court of Appeals for the Eighth Circuit, on the 21st day of November, 1911, reversing a decree theretofore entered in said cause by the Circuit Court of the United States, Eighth Circuit, District of Wyoming;

Now, Therefore, the condition of this obligation is such that if the said appellant, Diamond Coal and Coke Company shall prosecute said appeal to the Supreme Court of the United States to effect, and answer all damages and costs if it shall fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

DIAMOND COAL AND COKE COMPANY,
By L. O. EVANS, *Attorney.*
[SEAL.] EQUITABLE SURETY COMPANY,
By FRANK MEAD, *Vice-President.*

Attest:
JOHN S. BATES,
Ass't Secretary.

The foregoing bond is approved this 15th day of January, A. D. 1912.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) No. 3286. United States Circuit Court of Appeals, for the Eighth Circuit. The Diamond Coal and Coke Company, a

COPY BOUND CLOSE

corporation, Appellant, vs. The United States of America, Appellee. Bond on Appeal to Supreme Court, U. S. Filed Jan. 15, 1912, John D. Jordan, Clerk. B. M. Ausherman, C. F. Kelley, L. O. Evans, Att'ys for Appellant.

(*Affidavit in Support of Petition for Appeal to Supreme Court U. S.*)

And on the fifteenth day of January, A. D. 1912, an affidavit in support of the petition for appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

Circuit Court of Appeals of the United States, Eighth Circuit.

No. 3286.

THE DIAMOND COAL AND COKE COMPANY, a Corporation, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Affidavit of F. W. C. Whyte.

STATE OF MONTANA,
County of Silver Bow, ss:

F. W. C. Whyte, being first duly sworn, on his oath deposes and says: That he is an officer, to wit, Manager of the above named appellant, Diamond Coal and Coke Company, and is personally acquainted with its property and affairs; that affiant is well acquainted with the lands described in complainant's bill of complaint in the foregoing action, the title to which lands constitutes the matter in controversy in the above action, the said action being originally brought in the Circuit Court of the United States, Eighth Circuit, District of Wyoming, to annul and cancel certain patents theretofore issued by the United States of America to said Diamond Coal and Coke Company for said lands, and that affiant is well acquainted with the value of said lands; that the value of said lands exceeds the sum of Five Thousand Dollars ($5,000.00), and that the amount and matter in controversy in the above action between the appellant and the appellee exceeds the sum of Five Thousand Dollars ($5,000.00), exclusive of interest and costs.

F. W. C. WHYTE.

Subscribed and sworn to before me this 12th day of January, A. D. 1912.

[SEAL.] W. T. BLEICK,
Notary Public for the State of Montana,
Residing at Butte, Montana.

My commission expires January 27, 1912.

SE IN CENTER

(Endorsed:) No. 3286. Circuit Court of Appeals of the United States, Eighth Circuit. The Diamond Coal and Coke Company, a corporation, Appellant, vs. The United States of America, Appellee. Affidavit of F. W. C. Whyte in support of Petition for Appeal to Supreme Court, U. S. Filed Jan. 13, 1912. John D. Jordan, Clerk. C. F. Kelley, L. O. Evans, W. B. Rodgers and D. Gay Stivers, of Butte, Montana, Attorneys and of Counsel for Appellant, Diamond Coal and Coke Company.

(*Order Allowing Appeal to Supreme Court U. S.*)

And on the fifteenth day of January, A. D. 1912, an order allowing an appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 3286.

THE DIAMOND COAL AND COKE COMPANY, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Order Allowing Appeal.

The above named Diamond Coal and Coke Company, a corporation, having filed its petition, and assignments of error, praying for the allowance of an appeal to the Supreme Court of the United States, from the final decree heretofore made and filed in the above entitled cause, reversing the decree of the United States Circuit Court for the District of Wyoming, Eighth Circuit, with directions to enter a decree in favor of the United States of America and against said Diamond Coal and Coke Company, and said Diamond Coal and Coke Company, praying that pending said appeal all further proceedings under the decree of this Court be stayed by the order of this Court; and said Diamond Coal and Coke Company having filed a bond in the penal sum of Ten Thousand Dollars, with sureties satisfactory to this Court, conditioned on the prosecution of said appeal to effect by said Diamond Coal and Coke Company, and to answer all damages and costs if said Diamond Coal and Coke Company fails to make said appeal good;

It is, therefore, hereby ordered that the appeal of the said Diamond Coal and Coke Company to the Supreme Court of the United States, be and is hereby allowed, as prayed; that said bond be and the same is hereby approved, and that all further proceedings under said final decree of this Court be, and the same are, hereby stayed pending said appeal.

Dated this 15th day of January, A. D. 1912.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

COPY BOUND CLOSE

(Endorsed:) No. 3286. United States Circuit Court of Appeals for the Eighth Circuit. The Diamond Coal and Coke Company, a corporation, Appellant, vs. The United States of America, Appellee. Order allowing Appeal to Supreme Court, U. S. Filed Jan. 15, 1912, John D. Jordan, Clerk.

(*Citation on Appeal to Supreme Court U. S.*)

And on the twenty-sixth day of January, A. D. 1912, the citation on appeal to the Supreme Court of the United States was filed in said cause, the original of which with acknowledgment of service thereof is hereto attached and herewith returned:

United States Circuit Court of Appeals, Eighth Circuit.

No. 3286.

THE DIAMOND COAL AND COKE COMPANY, a Corporation, Appellant,
versus
THE UNITED STATES OF AMERICA, Appellee.

Citation.

THE UNITED STATES OF AMERICA:

To the United States of America:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty days after the date of this citation, pursuant to an appeal, taken by the above named Diamond Coal and Coke Company, a corporation, allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the Diamond Coal and Coke Company, a corporation, is the appellant, and you, The United States of America, is appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be reversed and corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Judge of the United States Circuit Court of Appeals for the Eighth Circuit, this 15th day of January, A. D. 1912.

WALTER H. SANBORN,
Judge United States Circuit Court of Appeals, Eighth Circuit.

Service of the foregoing citation, and receipt of a copy thereof, is hereby acknowledged this 18th day of January, 1912.

H. S. RIDGELEY,
United States Attorney, Dist. of Wyoming.

SE IN CENTER

[Endorsed:] No. 3286. United States Circuit Court of Appeals for the Eighth Circuit. The Diamond Coal and Coke Company, a corporation, Appellant, vs. The United States of America, Appellee. Citation on Appeal to Supreme Court, U. S. Filed Jan. 26, 1912. John D. Jordan, Clerk.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript consisting of three volumes, Volume I being paged from 1 to 848, inclusive, Volume II being paged from 849 to 1075, inclusive, and Volume III being paged from 1076 to 1105, inclusive, contains full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause in said Court wherein the United States of America is Appellant and The Diamond Coal and Coke Company, a Corporation, is Appellee, No. 3286, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service thereof is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this first day of February, A. D. 1912.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 23,062. U. S. Circuit Court Appeals, 8th Circuit. Term No. 986. The Diamond Coal & Coke Company, appellant, vs. The United States of America. Filed February 16th, 1912. File No. 23,062.

Office Supreme Court, U. S.
FILED
JAN 8 1914
JAMES D. MAHER
CLERK

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 192.

THE DIAMOND COAL AND COKE COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

BRIEF OF APPELLANT.

C. F. KELLEY,
L. O. EVANS,
Of Butte, Montana,
Solicitors and of Counsel for Appellant.

B. M. AUSHERMAN,
Of Evanston, Wyoming,
Of Counsel for Appellant.

(23,062.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 192.

THE DIAMOND COAL AND COKE COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

BRIEF OF APPELLANT.

STATEMENT OF FACT.

The Pleadings.

The bill charges that on January 1, 1900, the United States of America was the owner of 2,840 acres of land situated in Uinta County, Wyoming, described in the bill; that all of said lands were vacant, unreserved, unappropriated and rough and broken in character, and were at the same time known as coal lands, and that said lands could only be legally entered and purchased from complainant by

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compliance with the act of Congress approved March 3, 1873, entitled "An act to provide for the sale of lands of the United States containing coal," and being afterwards embodied in the Revised Statutes as sections 2347-2352; that the defendant at all times well knew said lands were coal lands and chiefly valuable as such, and could only be entered and acquired under the provisions of the coal-land laws of the United States; that defendant, through its officers and agents, well knowing the lands to be coal lands, and valuable as such, entered into a fraudulent conspiracy with one Thomas Sneddon and one Daniel F. Harrison to fraudulently acquire said lands from the complainant under the acts of February 13, 1862, being sections 2304 and 2306 of the Revised Statutes, and the act of August 18, 1894, found in 28 Statutes at Large, page 397, known as the "soldiers' additional homestead acts"; that the defendant in furtherance of said conspiracy purchased soldiers' additional homestead scrip, and through the said Sneddon and Harrison and by means of false and fraudulent affidavits and representations entered and purchased the said lands with said scrip; that patents were thereafter obtained therefor in the names of the said Sneddon and Harrison, and the said lands by deed conveyed to the appellant herein, in violation of the acts of Congress and in fraud of complainant's rights.

The prayer of the bill is that all of the said patents be canceled, and that complainant have an accounting for all coal mined and taken from said lands.

The answer denies that said lands are or were coal lands or chiefly valuable as such at the time of purchase; alleges that said lands were grazing lands and agricultural in character and subject to entry and purchase under said soldiers' additional homestead acts; admits that Sneddon and Harrison entered and purchased the said lands with soldiers' additional homestead scrip, and that the same were afterwards conveyed to the defendant; that the said lands were all

properly and legally acquired under the said additional homestead acts of Congress, and that at the time said lands were applied for, entered and obtained, they were not known to be valuable for coal deposits and that their only known value at said times was for agricultural and grazing purposes, and that they were subject to entry under said laws; denies that the defendant or its successors or agents, knew that said lands or any portion thereof, were known coal lands, and denies that any of said lands were coal lands within the meaning of said coal land act; denies all charges of conspiracy and confederation alleged in the bill; denies that there was any intent or purpose on the part of the defendant, or Sneddon or Harrison, to fraudulently obtain said lands, or any of them, and denies all other charges in the bill of fraudulent act or purpose, or that there was any intent or purpose or desire to obtain the lands from complainant in any manner other than as provided and required by the acts of Congress; alleges that defendant purchased said lands from Sneddon and Harrison for a valuable consideration, and alleges that the said lands and all thereof, were legally and properly acquired, and that the defendant became and is vested with an indefeasible title thereto.

The answer admits that the defendant is engaged in mining in Uinta County, Wyoming, in the vicinity of some of the lands described in the bill, but denies that any of said lands are being, or have at any time been mined for coal, or that any coal has been mined or removed from said lands or any thereof.

The Evidence.

Descriptions of the lands in controversy, with the entry number, names of assignor and assignee, by whom the land was entered, and dates of applications, receiver's final receipts and patents are shown by the following tabulated statement:

Lands in Controversy.

Entry No	Assignor.	Description.	Assignee.	Date of application.	Date of receiver's receipt.	Date of patent.
908	J. R. Stockman.....	W. 2 N. W. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 1-99	7-15-03	11-10-03
719	J. J. Wilson.....	W. 2 S. W. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 8-99	11- 2-00	7- 9-01
747	W. E. Swihart.....	E. 2 S. W. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 1-99	1-19-01	7- 9-01
757	T. Patterson.....	N. 2 N. E. 4 and N. E. 4 N. W. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 1-99	2-26-01	8-29-01
775	Wm. Arthurs.....	S. E. 4 N. W. 4 and S. 2 N. E. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 1-99	5- 9-01	8-29-01
776	E. Stebbins.....	N. 2 S. E. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 1-99	5- 9-01	8-29-01
744	S. Benjamin.....	S. 2 S. E. 4 Sec. 18, T. 20 N., R. 116 W.....	T. Sneddon.....	5- 1-99	1- 1-01	7-15-01
790	G. G. Gallaher.....	W. 2 N. W. 4 Sec. 20, T. 20 N., R. 116 W.....	T. Sneddon.....	6-17-99	7- 1-01	12-17-02
733	F. Valentine.....	W. 2 S. W. 4 Sec. 20, T. 20 N., R. 116 W.....	T. Sneddon.....	.....	12- 1-00	7- 9-01
746	Jno. Fessler.....	S. E. 4 N. W. 4 and N. E. 4 S. W. 4 Sec. 20, T. 20 N, R. 116 W.....	T. Sneddon.....	6-17-99	1-19-01	7- 9-01
754	Wm. Peters.....	W. 2 N. W. 4 Sec. 30, T. 20 N., R. 116 W.....	T. Sneddon.....	6-17-99	2- 4-01	8-29-01
718	S. F. Hoover.....	E. 2 S. W. 4 Sec. 30, T. 20 N., R. 116 W.....	D. F. Harrison..	.....	11- 2-00	7-15-01

758	J. B. F. Haven.....	N. 2 N. E. 4 and N. E. 4 N. W. 4, Sec. 30, T. 20 N., R. 116 W.....	D. F. Harrison..	5- 8-99	2-26-01	8-29-01
1139	W. Collyer.....	S. 2 N. E. 4 Sec. 30, T. 20 N., R. 116 W.....	T. Sneddon.....	2-23-05	10- 4-05	6-21-06
755	W. Vandyke.....	N. 2 S. E. 4 Sec. 30, T. 20 N., R. 116 W.....	T. Sneddon.....	2-16-01	2-23-01	12-17-01
1015	E. Metthews.....	S. 2 S. E. 4 Sec. 30, T. 20 N., R. 116 W.....	D. F. Harrison..	10-24-04	11-25-04	6-30-05
720	H. Driggs.....	N. 2 N. E. 4 and N. E. 4 N. W. 4, Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	6-17-99	11-21-00	7- 9-01
756	W. J. McGuire.....	S. 2 N. E. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	2-16-01	2-23-01	12-17-01
745	L. Murdock.....	W. 2 N. W. 4 and S. E. 4 N. W. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	6-17-99	1-19-01	7-15-01
748	P. L. Sherman.....	N. 2 S. E. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	6-17-97	1-29-01	7- 9-01
756	W. J. McGuire.....	S. E. 4 S. E. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	2-16-01	2-23-01	7- 9-01
755	W. Vandyke.....	S. W. 4 S. E. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	2-16-01	2-23-01	12-17-01
749	N. B. Lewis.....	E. 2 S. W. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	6-17-99	1-29-01	7- 9-01
750	D. Farmington.....	W. 2 S. W. 4 Sec. 6, T. 19 N., R. 116 W.....	T. Sneddon.....	6-17-99	1-29-01	7- 9-01
753	C. Wilcox.....	E. 2 N. W. 4 Sec. 18, T. 19 N., R. 116 W.....	T. Sneddon.....	.....	2- 4-01	8-29-01
780	A. Worrall.....	N. 2 S. E. 4 Sec. 18, T. 19 N., R. 116 W.....	T. Sneddon.....	6-17-99	5-22-01	8-29-01
751	Henry Harris.....	N. 2 S. E. 4 Sec. 12, T. 19 N., R. 117 W.....	T. Sneddon.....	6-17-99	2- 4-01	8-29-01

Lands in Controversy—Continued.

Entry No.	Assignor.	Description.	Assignee.	Date of application.	Date of receiver's receipt.	Date of patent.
715	G. W. Brown.....	S. 2 N. E. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	5- 8-99	11- 2-00	7- 9-01
717	Parley Post.....	N. 2 S. E. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	5- 8-99	11- 2-00	7- 9-01
760	J. Deardorff.....	S. 2 S. E. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	5- 8-99	3-20-01	8-29-01
752	M. E. Crandall.....	N. 2 N. W. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	6-17-99	2- 4-01	8-29-01
716	J. A. Thomas.....	S. 2 N. W. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	5- 8-99	11- 2-00	7- 9-01
886	Wm. Cooley.....	N. 2 S. W. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	5- 8-99	4- 3-02	3- 1-04
822	A. M. Allan.....	S. 2 S. W. 4 Sec. 12, T. 19 N., R. 117 W.....	D. F. Harrison..	5- 8-99	3-22-02	2-26-02

In connection with the discussion of the evidence of the witnesses in connection with the rules of law applicable, we will go into the evidence in some detail, but at this time will make a brief general statement of the facts, most of which are uncontroverted upon the record.

The lands in controversy lie in a valley which extends in a general northerly and southerly direction from Ham's Fork River, Uinta County, Wyoming, this valley having a length of some fifty or sixty miles, with a width varying from about four to ten or twelve miles; on either side this valley is bounded by elevations of land scarcely meriting the name of mountains, but resembling more nearly in their general physical contour and topography the foothills which are usually found bordering upon mountain ranges. These hills extend northerly and southerly in a generally parallel direction to the valley and form the easterly and westerly boundaries thereof. The range of hills along the easterly boundary is the one with which we are concerned in this case, and bears the appellation of Oyster Ridge, so designated by reason of its wealth of fossil commonly designated by the name given to the ridge. Extending along this ridge in a general northerly and southerly direction there is a coal horizon, consisting of generally two, and in some places three, coal measures or strata, which measures lie one above the other, separated in places by comparatively few feet, while in other places the separation widens to from fifty to one hundred feet. These coal measures follow in their strike the general direction of the valley, having a somewhat more northerly and southerly direction, however, than the valley proper, or the ridge in which they are found. Only one of these coal measures has ever been developed to any extent, or mined, and it contains what is known locally and upon the record as the Kemmerer-Diamondville-Cumberland coal vein. These coal measures occur in sedimentary strata, consisting of sandstone and shales, the usual accompaniment of coal seams, and are so interstratified as to lie in a some-

what fixed and measurable geological position. In places the upturned edges of the coal strata are found well exposed; in other places for long stretches there is very little sign of coal, the place of the coal being taken by a shale outcropping, and for long stretches the outcropping of the coal measure can only be traced by what is known as "blossom," that is, small particles of coal mixed with and scattered throughout the surface wash deposits. Along other sections there is nothing whatever to indicate its presence (Trans., p. 692).

An engineer or coal prospector of experience could follow and trace the course of the coal measures extended across the country, but to one inexperienced there would be presented little, if any, evidence of the presence of a coal vein (Trans., p. 130).

In the westerly ridge, or foothills, which form the westerly boundary of the valley, there are also found coal measures consisting of large veins of lignite, belonging to a totally different geological age from the measures of the "Oyster Ridge," and of such crude and incomplete formation as to make the same worthless for commercial purposes. These coal measures or lignite veins in the westerly ridge of mountains belong to what has been designated as the Adaville group or measures, and lie several miles westerly of the ground in controversy; their dip or inclination, as they descend into the earth is also to the westerly, and there is no contention made by anyone that any part of the coal belonging to this Adaville system could by any possibility find its way beneath any of the lands in question, so that the westerly ridge and its coal measures may be dismissed from further consideration in this case, the only coal vein having any bearing upon the present controversy being the vein known as the Kemmerer-Diamondville-Cumberland coal vein.

In the intervening space between the two ridges lies the valley above referred to; the surface of this valley is smooth,

and entirely covered with a soil composed of a detritus formed by disintegrated clays, sandstone and shales. This soil is likewise covered with vegetation consisting of grass, grease wood and sage brush; no sedimentary rocks are exposed, either upon its surface or in the many gullies and ravines which traverse it in different directions and at different points. Within this valley there is absolutely no showing or indication of coal measures, coal or coal-bearing rocks of any kind or character. There is not at any place within it any sign of an outcrop, while its geology presents unquestionable proof that no coal measures or coal can exist beneath its surface save that which may possibly be found upon the dip of the Kemmerer-Cumberland vein, underlying, if at all, the valley at varying depths below its surface (Trans., pp. 131-133).

It is conceded upon the record that there is not within the exterior boundaries of any of the land in controversy the outcropping or any other evidence of any coal measure.

The lands in controversy were and are typical western grazing lands, and with irrigation are capable of producing crops.

The Kemmerer-Diamondville-Cumberland coal vein, no part of the outcrop of which is located upon or touches any of the lands in controversy in this action, in its descent into the earth, dips in a general westerly direction, with an angle of inclination varying from 17 degrees from the horizontal in its southerly portions, becoming more nearly vertical as one traverses the outcrop northerly, until in the vicinity of Diamondville and Kemmerer, it reaches an angle of inclination of from 22 to 30 degrees from the horizontal.

At practically all of the dates when the applications for, entries of and issuance of the patents to the grounds in controversy occurred, the only developed coal mines in this Kemmerer-Cumberland vein were those of the Kemmerer Company, at Kemmerer, the most northerly, and the Diamondville mines numbers 1 and 2 of the defendant com-

pany, the nearest of which, the No. 2 Diamondville mine, was situated two and one-half miles northerly of the most northerly section in controversy. South of the said Diamondville No. 2 mine there were no developed coal mines whatsoever. The mines of the Union Pacific Railway Company, known as the Cumberlands No. 1 and No. 2, and the small mine known as the Cumberland No. 3, were not opened until after the entries in question had been made, Cumberlands Nos. 1 and 2 having been opened in 1902, and Cumberland No. 3 in about 1906 or 1907 (Trans., p. 136). The commencement of the opening of the No. 4 mine of the Diamondville Company, which is situated on section 17, lying east of section 18, is the most northerly section in controversy, was in 1900, but it was at a considerably later date that any extensive workings were opened up in this No. 4 mine (Trans., p. 136).

At the dates of the making of practically all of the applications for the land in controversy, in the year 1899, there had been no prospecting or development whatsoever on the outcropping of the Kemmerer-Cumberland coal measures opposite or in the vicinity of the grounds in controversy (Trans., p. 139). Commencing about the year 1900 some prospecting holes were dug at various points along the outcrop of this coal measure opposite some of the lands in controversy, but at the dates when the soldiers' homestead scrip was filed with the Land Office for the purchase of these lands, nothing was known of the character or extent of this outcrop except as it betrayed itself by the occasional outcropping of the coal-bearing strata or the discoloration of the blossom; and the record uncontradictedly shows that *no working of any kind or character had then or has ever since been extended beneath the surface of the lands in question, and not one pound of coal has ever been taken therefrom; nor can any one say that there is today beneath any of this land in question a pound of coal,* except in one place, to-wit, along the easterly boundary of the north half

of the southeast quarter of section 18, township 19 north, where, within one year prior to the taking of evidence in this cause, and about six years after the issuance of the receiver's final receipt for this portion of the land, the workings of the Cumberland No. 3 mine had been carried to a sufficient depth to expose coal in the vein at that point (Trans., p. 372).

No witness has attempted to say that any one, upon the evidence or conditions which existed at the time of the making of the entries of the land in question, could even risk an opinion that any coal underlay any of the ground in controversy, and with the exception of one witness, Mr. A. C. Veatch, produced by the Government, every witness who has testified in this cause has said that even at the time of the taking of the evidence, in 1908, with the exception of the coal exposed by the workings of the Cumberland No. 3 mine above referred to, no one can assert even now whether there is coal beneath any of these lands or not. Mr. Veatch, who qualified as a geologist, and who made his first and only examination of the lands in controversy in the summer of 1905, at which time the Cumberland mines and No. 4 mine of the defendant had been opened up, and considerable prospecting had been done along the outcrop of the coal measure opposite the lands in controversy, gave as his opinion, based upon the hypothesis that the vein indicated by the outcropping of the coal measures, would continue in dip to the west until it passed under these lands, and that it would bear coal throughout its dip; further, basing his opinion on the assumption that the angle of dip from the horizontal would continue as the same was disclosed in workings to the north and south of the lands in question, he placed the vein, if it continued, under the lands nearest the outcrop at a depth of about 900 feet, and under the lands furthest from the outcrop at a depth of at least 5,000 feet. From the experience had in opening up the mines of the defendant northerly of the lands in controversy, and upon this coal vein, it

is unquestionably shown that the vein, because of the character of the strata enclosing it, and of the weight above it, cannot be worked commercially below a vertical depth of 900 feet (Trans., pp. 133, 134, 144, 145, 776, 777).

The complainant also proved by the records and evidence of the deputy surveyor, the classification of six townships, an area of thirty-six miles of land, including the lands in controversy. This classification had been made some years prior to the applications for and entries of the lands in controversy, and showed that the Surveyor General had classified all of the lands in controversy, except section 20, township 20 north, range 116 west as *agricultural lands.* The classification of section 20 is not of any value in this case because the classification was made of the section as an entirety, and as the outcrop of the Kemmerer-Cumberland coal horizon passes over the east half of the section, the classification was evidently based upon that fact, whereas, all of the lands in troversy, and showed that the Surveyor General had classified thereof, and a considerable distance west of the said outcrop (Trans., 40-46, 790, 847, 849, 851).

The Government also introduced a mass of evidence from the land office at Evanston, showing numerous entries of various character made upon lands adjoining those in controversy, and extending many miles in every direction. Many of these entries were homesteads and other agricultural entries, and a number of them were coal entries, but as 90 per cent of the coal entries were afterwards abandoned, as shown by the same records, and much of the ground first attempted to be entered under the coal entries was afterwards purchased as agricultural land by persons with whom this defendant has no connection, and as there was but one coal filing, to which we will hereafter refer, which could be claimed to have any bearing on this controversy, it is plain that none of this evidence is of any assistance in determining the issues in this cause.

Considerable of the record is devoted to evidence regard-

ing five homestead applications or entries, covering five quarter sections of land, made in the years 1897 or 1898, it being claimed by the Government that these entries were made at the instigation of and on behalf of agents of the defendant company for the purpose of fraudulently acquiring these quarter sections by homestead entries, and then having them conveyed to the defendant. These attempts to obtain the lands by these homestead entries were abandoned, and all of the entries relinquished before the scrip purchases in controversy in this action, and, as we will hereafter show, the evidence is outside the issues in this case, and immaterial for any purpose, and therefore we will not consume the time of the court by now further referring to it.

The defendant produced as witnesses Robert Forrester (Trans., pp. 460-583), Mark Hopkins (Trans., pp. 583-684), Dr. James E. Talmage (Trans., 684-751), Reno H. Sales (Trans., pp. 751-768) and F. W. C. Whyte (Trans., pp. 768-783). All of these men were geologists and mining engineers of long experience, and especially in the section of the West where the properties in question are situated, and three of them, Forrester, Hopkins and Whyte, had had large experience as practical coal operators in this section of Wyoming and other similar coal fields in the West. All of these witnesses were well qualified in every way, and had made thorough examinations of, and were familiar with, the ground in controversy and the adjoining mines and all developments which could throw any light upon the controversy. By these witnesses, and the maps and record evidence introduced in connection with their testimony, it was shown beyond any reasonable doubt, that even in the light of the conditions and evidence which existed at the time of the taking of their testimony in 1908, none of the lands in question would justify the expenditures necessary to develop and exploit them for coal mining purposes, and that so far as could be determined none of these lands had value for that purpose, but that all of the said lands had a definite value for agricultural purposes.

The cause was tried in the circuit court at Cheyenne, Wyoming, Honorable Robert E. Lewis, district judge, presiding. On October 15, 1909, Judge Lewis rendered his decision, containing his findings of fact and conclusions, his opinion being found in the record, pages 1068-1075. This opinion does not appear to have been published, but is fully set out in the opinion of the Circuit Court of Appeals, 191 Fed., pp. 787-790. By this decision the circuit court found that the proof wholly failed to sustain the bill, and the action was ordered dismissed, and thereafter judgment was entered accordingly.

The cause was by the complainant duly appealed to the Circuit Court of Appeals for the Eighth Circuit, and there argued and submitted, and on November 21, 1911, the Circuit Court of Appeals for the Eighth Circuit rendered its opinion reversing the decree of the circuit court, and remanding the cause with directions to enter a decree in favor of the complainant as prayed in the bill (Trans., pages 1078-1085). The opinion is reported in vol. 119 Fed., p. 786.

From the judgment and decision of the Circuit Court of Appeals this appeal was duly prosecuted by the appellant to this honorable court.

Assignments of Error.

Appellant respectfully presents for consideration upon the appeal the following assignments of error, and contends that in rendering its said decree and decision appealed from, said United States Circuit Court of Appeals for the Eighth Circuit erred in this, to wit:

1. In holding and deciding that the decree theretofore entered in said cause by the Circuit Court of the United States, Eighth Circuit, District of Wyoming, in favor of the said Diamond Coal and Coke Company, and against The United States of America, or any part thereof, should be reversed or

the said cause remanded to said circuit court with directions to enter a decree therein in favor of said United States of America, as prayed in its bill of complaint.

2. In not holding and deciding that the said decree, and each and every part thereof, theretofore entered in said case by the Circuit Court of the United States, Eighth Circuit, District of Wyoming, should be affirmed.

3. In holding and deciding that all or any part of the lands in controversy herein, being the lands described in the bill of complaint of the said United States of America, complainant herein, were, from the first day of January, 1900, or at any time subsequent thereto, or at any of the times when the same were applied for, entered or patented to the predecessors in interest of this appellant, vacant, or unreserved or unappropriated lands, or were rough or broken in character, or unfitted for agricultural purposes, or of slight utility for grazing; whereas, the evidence in the cause shows that each and all of the said lands were level and well fitted for grazing and agricultural purposes.

4. In holding and deciding that at the times of the applications for patents therefor, or the entries thereof, or the issuance of patents therefor to the predecessors in interest of this appellant, all or any of the said lands described in the bill of complaint were known coal lands or coal lands at all, or were largely or chiefly valuable as coal lands, or had any value as coal lands, or were of the value, for any purpose whatsoever, in excess of the sum of ten thousand dollars ($10,000).

5. In holding and deciding that any of the lands described in the bill of complaint, and in controversy herein were, at the time of the applications for patents therefor, or the entries thereof, or the issuance of patents thereon, or at any other time, or at all, valuable for any coal found or that might be found therein, or that any of the same, at any of the said times, were coal lands or known to be such; whereas, the evidence in this case shows conclusively

that at the time each and all of said tracts of land were applied for and entered and patented, no coal had been discovered upon any of the same, or was known to exist within the same, and the said lands at each and all of said times were shown to be agricultural in character under all of the evidence in the case under the classification of the public lands as determined by the Land Office of the United States and by the courts thereof.

6. In considering and acting upon any evidence of developments which had not been made, or conditions which did not exist, until after the applications for patents, or the entries or the issuance of patents for the lands in controversy. The character of the lands in controversy must be determined by conditions existing at or prior to the time of applications to purchase the same from the United States Government. There is no evidence whatsoever upon this record of the existence of any coal beneath any of the lands in controversy even at the time of the taking of evidence, except as to the north one-half of the southeast one-quarter section eighteen (18), township nineteen (19) north, range one hundred and sixteen (116) west, and, as to this particular tract of land, the only testimony showing, or tending to show, that any coal existed therein was upon developments made from the mine of another concern than that of the appellant, to which the appellant had no access nor means of acquiring information as to the conditions disclosed, and which development the testimony shows was not made until a period of more than six years subsequent to the issuance of the patent to the appellant for the tract of land.

7. In holding and deciding that the only manner in which all or any of the said lands described in the bill of complaint could be legally or at all purchased from the United States of America, was through compliance with an act of Congress entitled "An act to provide for the sale of lands of the United States containing coal," approved

March 3, 1873, and in part found in the Revised Statutes of the United Staes, sections 2347, 2348 and 2350 thereof, or that the same could only be properly or legally entered or purchased under any coal or mineral land act of the United States.

8. In holding and deciding that all or any of the lands in controversy herein could not be legally purchased from the United States of America under the homestead or preemption or other acts of the Congress of the United States of America, providing for the sale and disposition of agricultural lands.

9. In holding and deciding that any of the lands in controversy herein, and described in the bill of complaint, at the time of application for, or entry thereof, or issuance of patent therefor, to the predecessors in interest of this appellant, were not properly and legally applied for, entered, and patented under soldiers' additional homestead scrip; it being shown conclusively by the evidence in this case that under the classifications of public lands, at each and all of said times, laid down and determined by the United States of America, and by its Land Office, and by its laws and decisions of the courts, that the said lands were agricultural in character and properly applied for and entered as such, and that none of the same were subject to entry or purchase or patent under any of the coal-land or other mineral-land laws of the United States.

10. In holding and deciding that any of the officers, directors or agents of this appellant, or this appellant, or Thomas Sneddon or Daniel Harrison, or any of them, knew, or could or should have known, that any of the lands in controversy in this action were known or other coal lands in character, or valuable as such.

11. In holding and deciding that at any time there was any conspiracy or combination or confederation between the said Thomas Sneddon or Daniel F. Harrison, or any of the officers or directors, agents or employees of this

appellant, or any persons whomsoever, or this appellant, for the purpose of fraudulently or at all securing title to or possession of any of the lands described in the bill of complaint, or for any other purpose, or for the purpose of misrepresenting the character of the lands in controversy, or of obtaining the same from the United States of America, in any way not strictly in accordance with the laws of the United States and the regulations of the Land Office in force.

12. In holding and deciding that Thomas Sneddon and Daniel F. Harrison, or either of them, who obtained title from the Government to the lands in controversy in this action did, for any fraudulent purpose whatsoever, make any affidavit in connection with the application for, or entry of any such lands or that the said Sneddon and Harrison, or either of them made any false or fraudulent affidavits in connection with the application for, or entry of, said lands under soldiers' additional homestead scrip or otherwise, and in holding and deciding that the affidavits made by the said Sneddon and Harrison, in connection with the placing of additional homestead scrip upon the lands in controversy in this action and in obtaining title to said land from the Government, were not in all respects true and correct, and that any part of said affidavits was not made in absolute good faith.

13. In holding and deciding that the officers of the United States Land Office at Evanston, or the General Land Office at Washington, or the Interior Department, or any officers or representatives therein, or any persons whomsoever, were in any way deceived or misled by the said Harrison or Sneddon, or anyone else, by affidavits or otherwise, as to the character of the said lands, or as to the same being agricultural or grazing in character, and not coal lands; on the contrary, the evidence clearly shows that the said lands were at all times agricultural and grazing in character, and not coal lands, and that the same were so classified by the officers of said land offices and the

Interior Department, and were known to be such by all of such officers and representatives.

14. In holding and deciding that any of the lands in controversy in this action were by the said Daniel F. Harrison or the said Thomas Sneddon conveyed to this appellant without consideration, or that the consideration paid for the same were purely nominal, and that this appellant was not a purchaser of said lands in good faith for a valuable consideration, or that this appellant received said lands with full or any notice or knowledge that the said lands were coal lands in character, or had been obtained from the United States of America in fraud or violation of its laws or against any of its rights as alleged in the bill of complaint in this action, or otherwise.

15. In holding and deciding that any of the lands in controversy in this action are geographically intermingled with other lands owned or operated by this appellant.

16. In holding and deciding that there was any fraud or deceit of any character whatsoever intended or attempted or practiced upon the Government of the United States or upon its Land Office or Interior Department, or any of its officers or representatives in the placing of soldiers' additional homestead scrip upon the lands in controversy in this action, and the obtaining of title thereunder from the United States of America, as it affirmatively appears from the evidence and the law in this case that all of said lands at the time of application to purchase and entry, and the issuance of patents therefor, or any other time or at all, were not coal lands or valuable or known to be valuable for such or subject to entry under the coal land or other mineral land acts of the United States; but that the same and the whole thereof were at all times properly purchasable from the United States as agricultural lands, and were properly and in good faith, entered and purchased from the Government under the laws pertaining to the entry of non-mineral public lands of the United States.

17. In holding and deciding that this appellant, in purchasing the additional soldiers' homestead rights and scrip, under which the said lands were entered, paid therefor at the rate of from $6.00 to $13.00 per acre.

18. In holding and deciding that any of the lands in controversy were of a rough, broken character, or in a mountainous country, or of a character known as sage brush or alkali land; or that for grazing purposes the lands were worth not to exceed $1.00 per acre; whereas, the evidence conclusively shows that said lands were good grazing lands, and were being used as such, and of a value largely in excess of $1.00 per acre, and with water thereon for irrigation, would be splendid agricultural lands, and that the placing of water thereon would not be a matter of great difficulty.

19. In holding and deciding that in 1898, or at any other time, Thomas Sneddon, while in the service of the appellant company, or otherwise, suggested to a county official, or any other person whomsoever, that they have lands in that immediate locality taken up by homesteaders and sell them to some coal company, or that he said he believed there was coal in the lands, and that money could be made on the venture; or in holding and deciding that in 1898, at the time such conversation is claimed to have occurred, the said Thomas Sneddon was in the service of or connected in any way with the defendant company.

20. In holding and deciding that Thomas Sneddon had any knowledge prior to the issuance of patents for any of the lands in controversy that the same were coal lands or valuable for such, or that by his direction, in April, 1898, surveys were made of said lands, or particular attention given to the presence of coal, or the running of lines to include it.

21. In holding and deciding that the said Thomas Sneddon at any time said to the chairman of a surveying party, or any one else, that he wished to acquire certain indicated parcels of coal land before the Cumberland people

could get it, or that he, or any one else, would put homestead entries on such lands in order to keep the Cumberland people from getting them.

22. In holding and deciding that the coal or cash entry for one hundred and sixty acres of land, which was abandoned and relinquished to the Government by the said Sneddon was not due to an error as to the location of the land; whereas, the evidence conclusively shows that the said coal or cash entry was made in error and in the belief that lands upon the coal outcrop were being entered and that when the mistake was discovered the said entry was relinquished and abandoned.

23. In holding and deciding that the pre-emption and other statutes excepting known mines and salines from homestead pre-emption entries have little, if any, bearing on the question in controversy in this case, and in failing to apply the settled rules as to classification and determination of the character of lands for the purpose of the purchase and sale by the Government of the United States, to the facts in this case.

24. In holding and deciding that there was any intent in connection with the acquisition of any of the lands in controversy, in this action from the Government, to acquire the same because of any known or other value as coal lands, or for any other purpose than as indicated in the applications for the same, and for such surface value as the said property might have for agricultural and grazing purposes, and for townsite and other surface purposes in connection with the operations being carried on by this appellant.

25. In holding and deciding that there was any evidence whatsoever of fraudulent homestead entries upon any of the lands in controversy, made at the instance of this appellant, or with which this appellant was in any way connected, or that such evidence of fraudulent homestead entries applied to any but a very few of the tracts in controversy in this action, or that any of the acts of Thomas

Sneddon in connection with such homestead entries, or any of them, were for this appellant or its benefit or advantage, or done as an agent of this appellant.

26. In holding and deciding that any of such homestead entries was an illegal device, either for the purpose of holding the lands temporarily, or fraudulently securing title for the benefit of this appellant or any of its representatives or agents, or that this appellant had anything to do with the same.

27. In holding and deciding that any of the affidavits made by any of said homestead entrymen, in connection with such prior homestead entries as to the non-mineral character of the land, was false in any way; on the contrary, the evidence conclusively shows that all of such affidavits as to the non-mineral character of the land, and as to its agricultural and grazing character, were true.

28. In holding and deciding that there was any connection between such homestead entries and the later filings upon and obtaining title to said lands under additional homestead scrip.

29. In holding and deciding that any evidence in connection with such prior homestead entries should be or can be regarded in this case as material evidence for any purpose, especially as evidence of any fraudulent purpose on the part of this appellant, or any of its representatives and agents, to acquire the lands fraudulently.

30. In holding and deciding that any evidence in connection with such prior homestead entries had any connection with, or bearing upon, the applications for entries of, and the subsequent issuance of patents to the lands in controversy in this action, under the soldiers' additional homestead scrip, through which the said lands were obtained.

31. In holding and deciding that the United States of America, complainant below, is entitled to any decree whatsoever, cancelling or annulling any of the patents or entries for any of the lands in controversy in this action.

32. In holding and deciding that the complainant below, the United States of America, is entitled to any decree as against this appellant, for any accounting in connection with or for a recovery of damages in connection with any of the lands in controversy in this action.

33. In holding and deciding that the complainant below, the United States of America, is entitled to any relief whatsoever, or any decree against this appellant, as prayed in the bill of complaint herein, or otherwise.

ARGUMENT.

Point I.

This court has clearly established the rule that in a case of this character, to set aside and annul United States patents, the Government occupies the same position as any private party in a similar action, and must establish its charge by the same quantum and character of proof as private parties to similar actions charging fraud. See—

Davis Admin. *vs.* Weibold, 139 U. S., 507.
Atlantic, etc., *vs.* James, 94 U. S., 247.
Maxwell Land & Grant Case, 121 U. S., 381.

in which latter case the court says:

> "We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition as thus laid down in the cases cited is sound in regard to the ordinary contracts of private individuals, how much

more should it be observed where the attempt is to annul the grants, the patents and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumption is that all the preceding steps required by the law had been observed before its issue; the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be permitted that the titles by which so much property in this country and so many rights are held and purporting to emanate from the authoritative action of the officers of the Government, and as in this case under the seal and signature of the President of the United States himself, shall be dependent upon the haphazard of successful resistance to the whims and caprices of every person who chooses to attack them in courts of justice, but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces respect, and that amount of it which produces conviction, shall make such attempt successful."

This cause was determined in favor of appellant upon the facts and the law, and by the Circuit Court of Appeals against appellant, so that the rule as to the presumption of the correctness of findings of fact, which attaches to the findings of a lower court, and which especially attaches where there have been successive findings of fact to the same effect by the circuit court and the Circuit Court of Appeals, has no application here. The only reference to a situation where an appeal has been brought to this court

in a cause where the decision of the circuit court has been reversed by the Circuit Court of Appeals, that we have been able to find, is in the case of United States Mining Company *vs.* Lawson, 207 U. S., page 1. In that case this court attached the usual presumption to the findings of the Circuit Court of Appeals for the reason that no findings of fact were made by the circuit court. In the present case the record shows the facts to have been as fully found and determined by the circuit court as by the Circuit Court of Appeals; so we submit that the situation here presented is as if no findings had been made by either of the lower courts.

Whatever view this court may take of the presumptions attaching to the decisions of the lower courts, we submit that the inquiry should at least be as to whether there is upon this record sufficient proof of the clear and convincing character specified by this court in its decision in the cases above cited to support the findings of the Court of Appeals, and whether the inquiry be whether there be such clear and convincing evidence, or any evidence whatsoever, sufficient to support the findings, we respectfully submit that the record will be found entirely lacking, and even if it be assumed that the burden was upon the appellant in this action to show that the issues tendered by complainant have not been sustained, or have been disproven, we submit that the evidence submitted by appellant would have fully discharged such burden.

Point II.

Were the Lands in Controversy Known Coal Lands or Coal Mines and Only Subject to Entry under the Coal-land Laws?

The sole issue tendered by the bill is that the defendant, as the result of a fraudulent conspiracy, purchased the lands in question under the homestead laws, when in fact

they were known coal lands and mineral in character, and therefore enterable only under the act applicable to coal lands.

If the lands in question were not at the time of the applications or entries known coal lands or mineral lands, but were properly enterable under the homestead laws, then no fraud was committed upon the Government, and complainant's case must fall.

Under the provisions of sections 2304 and 2306 *et seq.* of the Revised Statutes, and the additional act of Congress approved August 18, 1894, the following rules are clear with respect to the entry of lands under soldiers' additional homestead certificates or scrip:

(*a*) It is applicable to all lands to which the homestead law applies;

(*b*) The requirements of the homestead law in regard to residence upon the land do not apply;

(*c*) The scrip is assignable and can be used without objection by an assignee.

No question is made in this case either in the pleadings or the proof that the soldiers' additional homestead scrip with which this land was purchased was insufficient to accomplish the purchase of the land, and no issue is made as to the regularity of the Land Office procedure, to wit, that the usual practice as to notice, giving opportunity for protest, or as to examination of the land by the Land Office officials, was not complied with; so that the sole question presented is as to the character of the lands at the time to which, under all of the decisions, the inquiry must be directed.

Geologically or mineralogically the constituent elements of all lands are largely mineral. The classification of lands into mineral and non-mineral lands is purely an arbitrary distinction created by the land laws of the United States, and possessing only the significance given by the statutes as construed by the Land Department and

the courts. The important question therefore here is to determine the character of the lands embraced within the term "known mines or mineral lands" in the sense that such lands are excluded from entry under provisions of the homestead law.

All of the public lands of the United States except those specifically reserved have been offered for sale under the conditions prescribed by Congress. It has devolved upon the Land Department to prescribe rules and regulations for the classification and disposition of such lands, and to determine rules of evidence to guide in making such classification, and in each particular case, before patent has issued, to determine into what class the particular lands should fall. It is a well-established rule, and one repeatedly recognized by this court, that the constructions given to statutes by those charged with the duty of executing them are always entitled to the most respectful consideration and should not be overruled without cogent reasons. See—

United States *vs.* Moore, 95 U. S., 760.
Barden *vs.* N. P. R. R. Co., 154 U. S., 228.

In the latter case this court, after referring to the fact that the Land Department was created to carry out the provisions of the land-law acts, and after emphasizing the consideration and weight which must be given to the acts and decisions of that Department, quotes from the language of Mr. Noble, formerly Secretary of the Interior, in the case reported in 2 Land Decisions, pages 238-246, wherein the Secretary, after referring to the uniform practice of the officers of the mineral division of the Land Department in permitting mineral locations within the limits of railroad grants up to the time of patent, refers to the consideration which should be given to such a long-established practice by the Land Department as follows:

> "This practice having been uniformly followed and generally accepted for so long a time there should be,

> in my judgment, the clearest evidence of error as well as the strongest reasons of policy and justice controlling, before a departure from it should be sanctioned. It has in effect become a rule of property."

Therefore, in the present case, we think the first inquiry should be as to the construction given the Federal statutes by the Land Office in classifying and determining what lands are subject to mineral or coal land entry and what subject to entry under the so-called agricultural acts. The practice and rulings of the Land Office are particularly important, not alone because of the weight due the construction placed upon the acts of Congress by the Land Department, the Department created to put those acts in practice, but also for the purpose of learning whether the uniform practice adopted by the Land Office as to the character and quantity of proof required by the Land Office was met in the present case; for, if under the uniform construction placed upon the land laws by the Land Office, and the rules and regulations prescribed as to proof, the lands in question were never enterable as coal lands, but were, on the contrary, properly enterable under the homestead laws, then it must be conceded that no fraud was practiced upon the Land Department. We submit that a review of the Land Office decisions will show that the established practice of that office, which should be regarded as a rule of property, has been to deny entries of lands as coal lands or mineral lands unless the same were shown to contain within their limits developed and opened mines or deposits of coal of commercial value, or other minerals in quantity sufficient to justify the development and exploitation of the land, and to render it more valuable for mineral than for other purposes; and it has been the uniform practice to require evidence of the existence of coal or other mineral deposits upon the land itself. The fact that the land was surrounded by land containing either coal or other mineral, or that it was adjacent to mineral lodes or coal

veins, or even that the land itself contained small quantities of mineral or surface croppings of coal undeveloped, has always been held insufficient, and where the character of the lands as mineral or coal lands was not established by such proof and evidence of mineral value the land has always been held properly enterable under the homestead and other non-mineral acts.

In one of the earliest cases reported, that of

Dughi *vs.* Harkins, 2 Land Decisions, 721,

a case involving a contest between mineral and agricultural claimants, Secretary Teller emphatically laid down the rule which has been followed to this date, as follows:

> "This land was returned by the Surveyor General as agricultural in character, and hence was subject to a homestead entry. In such case the agricultural character of the land continues until its mineral character is satisfactorily shown; and, upon a hearing ordered to establish its true character, the homestead entryman may rest upon the Surveyor General's return, and is required only to rebut proof of its mineral character. The burden of proof is therefore upon the mineral claimant, and he must show, not that neighboring or adjoining lands are mineral in character, or that that in dispute may hereafter by possibility develop minerals in such quantity as will establish its mineral rather than its agricultural character, but that, as a present fact, it is mineral in character; and this must appear from actual production of mineral, and not from any theory that it may produce it; in other words, it is fact and not theory which must control your office in deciding upon the character of this class of lands. Nor is it sufficient that the mineral claimant shows that the land is of little agricultural value. He must show affirmatively, in order to establish his claim, that the mineral value of the land is greater than its agricultural value."

The same rule was laid down by the Land Department in
Roberts *vs.* Jepson, 4 L. D., 60.
Cleghorn *vs.* Bird, 4 L. D., 478.
Hooper *vs.* Ferguson, 2 L. D., 712.

In the case of Commissioner of King's County *vs.* Alexander, 5 L. D., 126, a case involving the validity of coal-land entries, and where, although the coal was not exposed upon the land in question, proof as to the existence of coal veins upon adjoining ground and as to the probability of their dipping or extending under the lands claimed under coal entries was presented, involving the consideration of questions similar to those presented in this case, Secretary Lamar again emphasized the rule that the proof of the mineral character of the land must be specific and based upon an actual showing and production of coal from the land itself, using in his opinion the following language:

> "Aside from the testimony offered by the protestants, the evidence submitted by the counsel for the entrymen shows that their opinion is based upon a mere theory that coal will be found, if the shaft is sunk deep enough. But it has been repeatedly held by this Department that the proof of the mineral character of land must be specific and based upon the actual production of mineral; that it is not enough to show that neighboring or adjoining lands are mineral in character, and that the lands in controversy may hereafter develop minerals to such an extent as to show its mineral character, but it must be shown as a present fact that the lands are mineral, and this must appear from actual production of mineral and not from a theory that the lands may hereafter produce it."

In the case entitled *In re* Williams, XI L. D., 462, involving the allowance of a homestead entry, the Land De-

partment again recognized the rule that a showing of the existence of large veins of coal which had been developed in the near vicinity of the lands, although there were no outcroppings on the land, was insufficient to show that the land was valuable for coal or other mineral, and the land was held properly enterable under the homestead act.

In the case of Frees *vs.* The State of Colorado, 22 L. D., 510, where the question presented was as to the exception of "mineral lands from the grant of school lands to the State," the Land Department in its construction of the words "mineral lands" applied the rule as to known mines as used in the pre-emption law, citing the decision of this court in the case of Colorado Coal Company *vs.* United States, 123 U. S., 307, and found that to except the lands from the school grant it was necessary to show that mines, as such, had been opened upon the lands capable of producing coal or which would characterize the section as mineral. Also see—

Arthur *vs.* Earle, 21 L. D., 92.
Jones *vs.* Driver, 15 L. D., 514.
In re Elba Mining & Milling Co., 29 L. D., 279.
Tulare Oil & Milling Co. *vs.* S. P. Ry. Co., 29 L. D., 269.
Hardraker *vs.* Goldstein, 31 L. D., 87.

The rules and regulations of the Land Department from the beginning, and particularly in their specifications as to the affidavits which coal entrymen were required to furnish, show conclusively that the Land Office required positive proof of the actual existence of valuable coal deposits upon the land itself which was sought to be entered.

The first rules and regulations relating to coal lands, of which we can find any record, were promulgated by the Land Department July 31, 1882, found in volume 1, L. D., page 687. Under these regulations the applicant in the affidavit accompanying his application was required, among other facts, to *positively* make oath to the following:

> "And I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains large deposits of coal, and is chiefly valuable therefor."

If the claimant were seeking to purchase lands under an application based upon a priority of possession, he was compelled in his declaratory statement, among other things, to *positively* swear to the following:

> "That I have located and opened a valuable mine of coal thereon."

At the time of actual purchase, under either class of entry, the claimant had to practically reiterate the same facts. That it was the intention to require that the above statements be made positively and not as a matter of information or opinion, is shown by the fact that other provisions of the affidavits only require statements based upon such knowledge as the claimant has.

The coal-land rules and regulations above referred to, with slight amendments immaterial here, remained in force until April, 1907, when the Land Department adopted new regulations under which coal lands were classified and different prices placed upon the same, but the new regulations in the affidavits prescribed contained the same requirements as to the existence of coal in the land as above specified in the affidavits required under the regulations of July 31, 1882. See—

Volume 35 L. D., pages 669-670.

The Land Office decisions show beyond question that if at any of the dates of the entries of the land in controversy

herein, a contest had been tried in the Land Department upon the ground that the land was coal in character not subject to entry under the homestead law, the Land Department would have held proof of coal character of the land by evidences of an outcrop upon adjoining lands entirely insufficient, and would have held the lands properly enterable under the homestead act. Surely it cannot be said that where all of the requirements, classifications and rulings of the Land Department have been fully complied with, any fraud has been practiced upon that department.

The Government, as land owner, had adopted its own method of disposing of its lands. It made its own classification. The Government, by its statutes, and through its Land Department, by means of its rules, regulations, and decisions, had said to an intending purchaser desiring to purchase the lands in controversy: "Unless a certain showing can be made, these lands are purchasable as agricultural lands, and you are entitled to purchase them as such;" hence, it follows that the purchasers of the land in controversy, unable to meet the coal land requirements, were guilty of no fraud in accepting the Government's invitation to purchase them as agricultural lands.

If the Land Office was for many years mistaken in its construction of the acts of Congress, then, of course, any correction of that mistake should only be made to operate in the future, and certainly could not be made effective retroactively, so as to make fraudulent the acts of the entrymen in this case, which were not fraudulent, but in accord with the approved departmental practice at the times the acts were consummated. But the views of the Land Office were not erroneous; on the contrary they have been repeatedly approved by the decisions of this court and of the lower Federal courts and State courts which have had occasion to consider the questions involved.

This court, in the case of Colorado Coal & Iron Co. *vs.* United States, 123 U. S., 307, determined the question at issue in a case which, under the proof and the allegations

of the complaint, presented a situation substantially the same as the one at bar. In its decision this court says as follows:

> "It is not sufficient, in my opinion, to constitute known mines of coal within the meaning of the statute, that there should merely be indications of coal beds or coal fields of greater or less extent, and of greater or less value, as shown by outcroppings. The act of 1864 evidently contemplates a distinction between coal beds or coal fields, excluded from the pre-emption act of 1841, as known mines, and other coal beds or coal fields not coming within that description. We hold, therefore, that to constitute the exemption constituted by the pre-emption act under the head of 'known mines' there should be upon the land *ascertained coal deposits of such an extent and value as to make the land more valuable to be worked as a coal mine under the conditions existing at the time than for merely agricultural purposes.* The circumstance that there are surface indications of the existence of veins of coal does not constitute a mine. It is not even proof that the land will ever be under any condition sufficiently valuable on account of its coal deposits to be worked as a mine. A change in the conditions occurring subsequent to the sale, whereby new discoveries are made, or by means whereof it may become profitable to work the veins as mines, cannot affect the title as it passed at the time of the sale. The question must be determined according to the facts in existence at the time of the sale. If, upon the premises at the time, there were no actually known mines capable of being profitably worked for their product so as to make the land more valuable for mining than for agriculture, a title to them, acquired under the pre-emption act, cannot be successfully assailed. In the present case the testi-

> mony, in our opinion, does not justify us in finding that at the time Jackson acquired his title, there were upon any part of the premises in controversy any known mines of coal in the sense of the statute."

In the case of Deffenback *vs.* Hawke, 115 U. S., 392, 404, this court, in defining the term "lands valuable for minerals," used the following language:

> "We say 'land known at the time to be valuable for its minerals,' as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral,' in the sense of the statute, is applicable. * * * We also say lands 'known' at the time of their sale to be thus valuable, in order to avoid any possible conclusion against the validity of titles which may be issued for other kinds of land, in which, years afterwards, rich deposits of minerals may be discovered. It is quite possible that lands settled upon as suitable only for agricultural purposes, entered by the settler and patented by the Government under the pre-emption laws, may be found, years after patent has been issued, to contain valuable minerals. Indeed, this has often happened. We therefore use the term 'known' to be valuable at the time of sale, to prevent any doubt being cast upon titles to lands afterwards found to be different in their mineral character from what was supposed when the entry of them was made and the patent issued."

In the case of Davis, Admr., *vs.* Weibold, 139 U. S., 507, this court, through Mr. Justice Field, used the following language:

> "The exceptions of mineral lands from pre-emption and settlement and from grants to States for univer-

> sities and schools, for the construction of public buildings and in aid of railroads and other works of internal improvement, are not held to exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant. There are vast tracts of country in the mining States which contain precious metals in small quantities, but not to a sufficient extent to justify the expense of their exploitation. It is not to such lands that the term mineral in the sense of this statute is applicable."

Again this court, in the case of Dower *vs.* Richards, 151 U. S., 658, reaffirmed the rule that it is not sufficient in order to set aside a townsite patent that the lands covered thereby do in fact contain mineral, or even valuable minerals, when the townsite patent takes effect, but that they must at that time have been known to contain such mineral as to justify the expenditure of money for the purpose of extracting them. In the late case of United States *vs.* Plowman, reported 216 U. S., page 372, in determining what were mineral lands within the provisions of the timber cutting act of June 3, 1878, this court again applied the rule that the only lands excluded in 1878, or now, from any but mineral entry, are lands shown to be valuable for mineral or containing valuable mineral deposits, and this court further held that it was not sufficient to show that the lands were in a generally mineral country, or that the adjoining lands were mineral in character.

A somewhat analogous situation arises in the legal definition of the term "known mines or veins," in the case of patents for placer mining ground, which patents contain an exception of such mines or veins if not made the subject of specific application by the placer applicants. In such cases it has uniformly been held that the mineral veins or

mines, to come within the exception, must be such as to render the lands more valuable on that account than for other purposes, and that mere outcroppings or indications of mineral are not enough to classify the veins as known veins under the meaning of the act. See—

United States *vs.* Iron & Silver M. Co., 128 U. S., 673.

Reynolds *vs.* Iron & Silver M. Co., 116 U. S., 688.

Many decisions of the lower Federal courts clearly applying the same rules as to distinctions between mineral and non-mineral lands, might be called to the attention of the court, but we will merely direct the attention of the court to a few of the typical cases. See—

United States *vs.* Reed, 12 Sawyer, 99.

Nevada-Sierra Oil Co. *vs.* Home Oil Co., 98 Fed., 673.

Olive Land & Dev. Co. *vs.* Olmstead, 103 Fed., 568.

Midgeon *vs.* Mont. Central Ry. Co., 77 Fed., 249.

Since the decision of this case by the Circuit Court of Appeals the same question decided in this case, involving the rule for determining the mineral character of coal lands, upon which no showing of coal had been made, but which were situated so that a vein outcropping upon adjoining land would, if it continued upon its dip at the same angle, penetrate the lands in controversy, has been determined by the Circuit Court of Montana. See—

United States *vs.* Kostelak, 207 Federal, page 447,

the opinion being found in volume No. 2 of the advance sheets of that volume, of date October 30, 1913.

In that case the Honorable George M. Bourquin, district judge, presiding, who was particularly fitted for determining this question of classification of public lands by reason of his wide practice in the West, and also because of the fact that he had served a term of four years as

register or receiver of the United States Land Office at Helena, Montana, was unable to follow the decision of the Court of Appeals in this case, but on the contrary, rendered an opinion which we submit is strictly in accordance with the decisions of this court and with the uniform rulings and holdings of the Land Department. The opinion is so particularly applicable here that we take the liberty of quoting from it at some length, as follows:

> "The law applicable may be summarized thus: So long as public lands are on the market and so open to entry and sale, they are of but two classes, mineral lands and non-mineral lands. In the West the former can be legally entered under only the mineral land laws; the latter under only the non-mineral or what may be broadly termed the agricultural land laws. The former must measure up to a certain standard (that is, known to contain minerals in sufficient quantity to serve as the foundation of reasonable hopes and expectations that development will disclose minerals in paying quantities), and that by reason thereof the land is more valuable therefor than it is for agricultural uses. The latter have no standard. Though lands be practically valueless for agricultural uses, yet, if they do not attain the foregoing standard for mineral lands, they fall into the class of non-mineral lands and can be entered under only the agricultural land laws and by any one who will in good faith perform the conditions precedent to patent, whatever they may be. When fraud is alleged to procure the cancellation of a patent, the land alleged to be mineral land must be proven to have been known to be mineral, as above defined, at the time of final entry and sale.
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"A patent issued is evidence that the lands conveyed are of the class appropriate to the patent. It is a written public grant of the highest character, is solemn and high evidence of its own validity, and, out of respect for it and the necessity for stability of titles evidenced by it, it cannot be set aside for alleged fraud unless the allegations thereof are sustained by clear, strong, unequivocal, and convincing proof—proof, in quantity and quality, which commands respect and produces conviction. See Davis, Admr., *vs.* Weibbold, 139 U. S., 522; 11 Sup. Ct., 628; 35 L. Ed., 238, and cases cited. * * *

"The case of the United States *vs.* Diamond Coal & Coke Co., 191 Fed., 786; 112 C. C. A., 272, has been urged in support of a contrary conclusion. With all due respect for the eminent court that determined said case, this court cannot accept its construction and application of the law. In said case involving many different entries and patents, it is determined that where an extensive exposure or cropping of a large and valuable blanket coal vein exists in instances as much as two miles from legal subdivisions of certain lands and entirely off said land, but dipping towards said lands, upon which latter are not evidence of coal, and geological conditions are said by experts to be such that in their opinion the veins continue uninterrupted on their dip and extend under said lands, the said lands, not reserved but on the market and open to entry, are coal lands, mineral in class, enterable only as such and not enterable as non-mineral or agricultural lands, and if entered and patented under non-mineral or agricultural laws the patents are unlawful and to be set aside for fraud. It is believed that this is a construction and application of the law not warranted and never before arrived at by any court nor by the Land Department of the United

States in it practical administration of the public lands. See Davis, Admr., *vs.* Weibbold, 139 U. S., 507; 11 Sup. Ct., 628; 35 L. Ed., 238, and cases cited.

"Outcroppings of mineral upon certain land are more or less evidentiary, but by no means conclusive of its mineral character, and off the land their value as evidence rapidly lessens. The mountains of the West and the adjacent valleys and plains are ribbed with mineral vein outcroppings. They indicate possibilities or probabilities of valuable mineral deposits, but they are only indications. The country is pock-marked with prospect holes upon them. Some resolve these possibilities into realities and disclose valuable minerals, but far more fail therein, so that it is a common and truthful saying, born of costly and sad experience, that but one prospect in a thousand warrants development and unearths mineral deposits of value. Lands of great agricultural value and devoted solely to agricultural uses often contain these croppings of no value. The distance any vein may continue is notoriously uncertain, and presumptions are to be cautiously indulged. This is illustrated by Dahl *vs.* Raunheim, 132 U. S., 263; 10 Sup. Ct., 74; 33 L. Ed., 324, wherein it is held that a vein of quartz exposed 200 or 300 feet without the boundaries of a placer claim and trending in the direction of said claim, as would appear from the record in said case, is not presumed to extend within it. Contrary to the doubt expressed in the Diamond Coal & Coke case, non-mineral or agricultural entries are lawful and commonly made of lands of little or no agricultural worth and adjacent to valuable operating mines, but which lands are not known to contain minerals of value.

"Such non-mineral or agricultural homestead en-

tries of lands have been made and patented adjoining the word-famous Pennsylvania, Rarus, Matt, and other mines of Butte, lands towards which the veins or lodes of said mines in a measure strike and also dip, and so made and patented after the Government records showed said mines patented and after the great value of said mines was common knowledge. Section 2337, R. S. (U. S. Comp. St. 1901, p. 1436), is further congressional recognition that land near but not contiguous to known veins or lodes may be non-mineral and enterable as such. If it contains no known valuable mineral deposits, it falls into the non-mineral or agricultural class, however rich in minerals are the adjacent lands. To attach mineral character to lands, it is not sufficient to demonstrate that adjacent lands are mineral in character. It is every-day practice for the Land Department to survey and divide a single 40-acre legal subdivision or smaller tract into mineral land, known to contain valuable deposits of mineral, and into non-mineral or agricultural land, not known to contain valuable deposits of mineral though containing croppings or other indications thereof. If presumption is to be indulged that a vein or lode extends under lands two miles distant from the outcroppings, why not five, ten, or an indefinite number of miles; where will be the limit and how and by whom will it be determined? It may be believed a vein or lode so extends, but belief is not the required knowledge.

"To the argument that, unless these beliefs, speculations, presumptions are indulged, the Government by non-mineral or agricultural entry may be unlawfully deprived of lands that time and development may prove to contain valuable mineral deposits may be responded that conditions at the time of entry and sale govern; that, if the lands are placed on the

market and at entry and sale are not known to contain such deposits, a non-mineral or agricultural entry is the only lawful entry that can be made thereon; it is not unlawful deprivation but lawful sale; and, if time and development should discover mineral deposits of the greatest value therein, that is the good fortune of the entryman at which the Government nor any can cavil. Furthermore, if the Government desires to retain to itself the possibilities of mineral deposits of value, Congress can legislate to that end that lands containing any indications of minerals shall be classed as and entered and sold as mineral lands, or that as provided by acts June 22, 1910, c. 318, 36 Stat., 583 (U. S. Comp. St. Supp. 1911, p. 614), the surface may be entered under non-mineral laws, the coal, if any, being reserved, or the Land Department can withdraw such lands from non-mineral or agricultural entry, even as it did the land here involved, and, if it is believed the geological conditions are such that valuable deposits may exist therein, can maintain the withdrawal until time and development determine. Thus full protection will be afforded to the Government. Undoubtedly such withdrawal should have been timely made in reference to at least some of the lands involved in the Diamond Coal & Coke case. In weighing the decision of the court therein, however, let it be remembered this was not done. But so long as the law is as it is, and so long as the lands are not withdrawn from, but left on the market and open to entry and sale, they are legally enterable under the non-mineral or agricultural land laws, though worthless for agricultural uses, if not mineral lands as hereinbefore defined. And so entered under such circumstances, no mere mineral indications, beliefs, hopes, speculations, presumptions, no belated precaution by withdrawal from market, nor the realities of subsequent development can lawfully destroy the vested

right created by such non-mineral or agricultural entry.

"If the Diamond Coal & Coke case be contemplated in reverse, it is believed present error will be apparent. Let it be supposed that the entries involved were coal mineral entries. It can be only a supposition, for, in view of the facts, the law and the Land Department must and would have classed the lands as non-mineral or agricultural lands, and coal-mineral entries would not have been allowed therefor. Since absolutely no coal had been developed upon the lands, the proofs required precedent to coal-mineral entry could not be made; and neither the law nor the Land Department permits such entries to be made without satisfactory evidence of the developed and known mineral character of the land merely because the land is otherwise worthless, and a would-be entryman has faith inspired by geological conditions that distant veins or lodes extend under the land, and he is willing to pay a large price therefor. The latter is a minor consideration and not an inducement, and a higher price will not legalize an entry and sale of non-mineral or agricultural lands under the mineral laws. But, if the proofs precedent to coal mineral entries had been furnished and coal-mineral entries made and patents issued, the entiries would unquestionably have been founded upon perjury and fraud, and the said case would still have been one to cancel the patents for fraud, not, however, to cancel non-mineral or agricultural patents for fraud in that the lands were mineral in character, but to cancel coal-mineral patents for fraud in that the lands were non-mineral or agricultural in character, with decree as now for complainants. And it is a safe hazard that there would have been a busy session of the Federal grand jury of the district of the lands returning true bills against the entrymen guilty

of such glaring and transparent perjury, as would clearly have been involved under the facts and circumstances disclosed in said case, in making the sworn proofs required precedent to coal-mineral entries of known deposits of valuable coal in said lands. It may be pointed out that, though lands have little or no agricultural value and are sought in the hope and belief that time and development will disclose valuable deposits of mineral therein and are sought for that reason and purpose, if not mineral lands as hereinbefore defined they can be lawfully entered only as non-mineral or agricultural lands and can be so entered under any of what are commonly termed 'scrip' entries, of which the entries involved in the Diamond Coal & Coke case are one variety. Such hopes, beliefs, purposes are not material to the issue of fraud alleged in cases like unto the Diamond Coal & Coke case, at least not unless the known mineral character of the land involved at the time of final entry is otherwise proven. If lands are mineral, the entryman's good faith will not legalize his non-mineral entry thereof; and, if they are non-mineral, his bad faith will not illegalize his non-mineral entry thereof—transform their character to that of mineral lands."

The decisions of the various State courts are also in uniform accordance with the above rules. As examples of such cases, see—

Alford *vs.* Barnum, 45 Cal., 482;
Blackburn *vs.* United States, 5 Arizona, 482; 48 Pac., 582;
Standard Quicksilver Co. *vs.* Habishaw, 132 Cal., 115; 64 Pac., 113.

But it is contended by the Government, and was held by the Circuit Court of Appeals, that the decision of this

court in the case of Colorado Coal & Iron Co. *vs.* United States, 123 U. S., 307, which we submit is absolutely determinative of this case, has no application, because the term "known mines and salines" used in the old pre-emption acts is much narrower than the terms "mineral lands," "lands valuable for mineral" or "coal lands," later engrafted upon the public-land laws.

In the first place, we contended that even if the terms "mineral lands" or "coal lands" as used in the later acts have a narrower meaning than "known mines" as used in the pre-emption act, that the decision of this court in the Colorado Coal case is still absolutely controlling under the evidence in this case, because the language used by this court in that case is equally applicable to an inquiry upon the question of whether lands were lands "valuable for mineral" or "mineral lands." In either case the proof of the Government does not meet any of the requirements of the definition. In other words, whether it is necessary, in order to constitute an exception from the present homestead acts, to show the existence of an opened and known mine upon the premises, or whether it is only necessary to show that at the date of the application or entry there was within the lands in question coal or other minerals in quantities sufficient to render the lands more valuable on that account, the evidence is lacking to sustain the Government, but we submit that an examination of the history of our coal-land acts and the construction thereof by this court and by the Land Department shows beyond question that the construction by this court of the terms of the old pre-emption act is still applicable in determining whether coal lands are known mineral lands within the meaning of the law as it existed from 1841 to the time of patenting all of the lands in controversy.

Scientifically, of course, coal is not a mineral, it being of purely vegetable origin. Prior to the passage of the act of July 1, 1864, there was no specific provision in our land

laws for the disposition of coal lands, they having been theretofore disposed of under the agricultural acts.

By the act of July 1, 1864, it was provided that "any lands embracing coal beds or coal fields, constituting portions of the public domain, and which as mines, are excluded from the pre-emption act of 1841," might be disposed of by the Land Department under certain conditions expressed in the act, and at a price of not less than twenty dollars an acre.

Slight amendments to this act were adopted by the supplemental act of March 3, 1865. The present act, approved March 3, 1873, and which is embodied in the Revised Statutes of 1878 as sections 2347 to 2352, is but a substantial re-enactment of the acts of 1864 and 1865 above referred to. The force and meaning of the original acts remain unchanged.

Colorado Coal Co. *vs.* United States, 123 U. S., 325.

Prior to the passage of the coal act of 1864 the Land Department did not regard coal as a mineral within the meaning of the prior legislation, but after the passage of this act it was construed by this court as a legislative declaration that coal lands which came within the exclusion of known mines as used in the pre-emption act were mineral lands. See—

Mullen *vs.* United States, 118 U. S., 271, at pages 266, 277;

Colorado Coal Company *vs.* United States, 123 U. S., 325.

Thus it will be seen that the legislative classification of coal lands as mineral lands is not, as shown by the construction of this statute and the application thereof in the Mullen and Colorado Coal Company cases as aforesaid, a declaration that all coal is mineral, or that all coal lands are mineral lands, but that it was only intended to make the act applicable to coal lands such as are specified in the exclusion

of known mines from the pre-emption act of 1841, and the rule as to the necessity of showing the existence of known mines under the pre-emption act, as applied by this court in the Colorado coal case, is applicable to the present case.

That this has been the construction of the coal-land statutes and of the decisions of this court by the Land Department is shown by the many decisions hereinbefore cited, and the rules and regulations of the Land Department, wherein that Department has always required, in the case of a coal entry, a showing of the existence of a workable and commercially valuable mine or deposit of coal upon the land in question, and a much stronger showing than has been required in the case of other mineral lands sought to be acquired as quartz or placer land.

The Land Department, in preparing its rules and regulations, has always made a distinction between statutes applicable to mineral lands proper or metalliferous deposits and coal land. Its rules and regulations applying to land valuable for mineral other than coal have been and now are known and designated as "United States Mining Laws and regulations thereunder." Those relating to coal lands have been and now are designated as "coal-land laws and regulations."

The coal-land law of 1873 is a separate and distinct act in itself, and while the act was later compiled in the same chapter as the acts referring to mineral lands, its compilation in a chapter entitled "Mineral Lands and Mining Resources," is of no significance. Any underground excavation from which coal or any other substance is produced would come within the etymological signification of the term "mines."

From the decisions of the courts and the Land Office, we believe that it can be said, without successful contravention, that the following propositions are firmly established:

First, the known character of the land at the time of the application or entry is determinative. The rule has always

been that the inquiry would not be made as to such character at any time subsequent to the time of payment and final receipt or entry. The question must be determined by the conditions existing at the time the applicant does everything required on his part and becomes entitled to a conveyance, from which time he is regarded as the equitable owner of the land. Upon the purchase of homestead land under additional scrip, no residence is required. The scrip is tendered to and left with the Land Office at the time of application, so that in the case of such entries we submit that the time of the first application is the period to which the inquiry will be directed; and further, the time of application should be the determinative period, where the patent is sought to be set aside for fraud, for the reason that the motive which animated the entryman must be judged by the facts known to him and existing at the time his application was made. It is not material what developments subsequent to the application or entry show.

Second, in order to bring the land within the allegations of the bill, that is, to render it only enterable under the coal land law, it must have been shown that it contained known mines or deposits of coal, of a workable character, and of sufficient extent to make the lands more valuable on account of their existence for coal mining purposes than the lands would be for agricultural purposes.

Third, the mere presence of coal croppings or coal mines in the vicinity of the lands in question cannot determine the character which must be assigned to the land. On the contrary, it must be judged by the known physical features of the identical lands in question.

Fourth, if the lands were not shown to be coal lands in character, it is immaterial that they may have but slight value for grazing or other agricultural purposes.

If the foregoing propositions of law are established, and we submit they are too well sustained by authority, that too many existing rights and titles are based on this interpretation of the law to be now disturbed, then it is

hardly worth while discussing the evidence in this case, for it must be conceded by the Government that if any of the foregoing principles be applied the Government has wholly failed to make out a sufficient case to justify the cancellation of the patents in question.

The legal principle applied by the Circuit Court of Appeals in determining this case against appellant establishes an entirely new doctrine for the determination of the character of public lands, and is the only decision which we have been able to find where lands have been classed as coal lands or mineral lands without a showing of the existence of the mineral or coal upon the land itself. The moving consideration with that court seemed to have been the proposition that if actual evidence of the coal itself upon the land in question is required before purchase from the Government, that lands such as those in controversy, which lie in the vicinity of known coal veins or known mineral lands, might be purchased mainly or solely for the probability or possibility of their containing coal or other mineral, and thus actual mineral lands be obtained by purchase under the agricultural acts. This possibility is suggested by the facts in almost every case we have cited, whether from the decisions of this court or the Land Office, and if inconsistent with the purposes of the Government, it was within the power of Congress to either withdraw the lands from sale until further exploration or development could be made, or to provide, as Congress has done in the case of coal lands by the act of June 22, 1910, that such lands could be entered as agricultural lands, under the non-mineral laws, provision being made for a reservation in the patent of any coal that existed, or might be found to exist, beneath the surface. The passage of this statute must be taken as a direct recognition by Congress of the practice theretofore followed, and a recognition of the fact that prior to the passage of such act, title to such coal bodies could have been legally and properly obtainable under agricultural entries.

But even under the legal theory adopted by the court of appeals, if the court had confined its inquiry to the conditions existing at the time of the applications or at the time of entries, or even patents of the lands in question, its decision must have been one sustaining appellant's patents, and beyond this we submit that if the evidence as to conditions, even after the bringing of the action, and at the time of the taking of the testimony be considered, it cannot safely be said that the lands in question are such as would justify the expenditure necessary to exploit and develop them as coal lands; or, in other words, it cannot be said that the mineral or coal value of the land is greater than its value as agricultural land.

Point III.

Evidence as to Conditions at the Times of Applications or Entries.

As shown by the list hereinbefore in this brief set forth, all of the applications except six, covering 400 acres of land, were made in or prior to the month of June, 1899, and all of the applications and final entries were made and final receipts were given by the Land Department in or prior to July, 1901, excepting as to five applications aggregating 400 acres.

It stands uncontradicted upon the record that at these dates, when practically all of the applications and entries were made, there not only were no developments of any character in or under any of the lands in controversy, exposing coal in any of the lands, but there had been no developing or prospecting work upon the outcroppings of the coal-bearing strata lying easterly at various distances from the lands in controversy. The only coal mines then opened upon the Kemmerer-Cumberland vein, the only vein which could possibly enter the lands in controversy, were the mine

of the Kemmerer Company and the mines Nos. 1 and 2 of the Diamond Coal & Coke Company, lying northerly from the lands in controversy, the nearest of said mines to said land being the Diamondville No. 2 mine, situated distant about two and one-half miles from the most northerly section in controversy; south of this Diamondville No. 2 mine no mines had been opened upon this coal measure or vein, and there had been no development of any kind upon the outcrop until a point had been reached many miles south of the most southerly section in controversy. The railroad which is now operated, running from the main line of the Union Pacific Company, south to the coal mines of the Cumberland Company, a short distance west of the grounds in controversy, was not constructed until after the applications for patent to these lands. No witness who has testified in the cause has even ventured an opinion that any of the lands in controversy could have been or would have been regarded as having any value for the coal therein contained, based upon the evidence of conditions which existed at or prior to practically all of the entries in controversy. Without development upon the outcrop of the coal measures opposite or at such points as would have bearing on the grounds in controversy, no one could say as to the probable existence of any coal vein, or if it existed, its width, or as to the inclination of the vein upon its dip, so as to even surmise whether the vein would penetrate beneath the lands in controversy.

As to the agricultural value of the lands, it is shown uncontradictedly that they lie in the valley between the two ridges, are smooth of surface and covered with grass and sage brush, are typical western grazing lands, and if water were brought upon them, would be susceptible of cultivation and the raising of crops. It is uncontradictedly shown that within two or three miles south of the lands in question, there are several ranches which are cultivated, and that on one of these ranches, composed of lands similar or really inferior to the land in question for agricultural pur-

poses, with irrigation, satisfactory crops of hay and oats had been raised (Transcript, p. 595).

We respectfully submit that even upon the legal theory evidently held by the circuit court of appeals, a finding that prior to or in the year 1901, any of the lands lying at a distance varying from a quarter of a mile to two and one-half miles westerly from this meager outcrop had any value whatever as coal lands cannot be sustained.

Point IV.

Conditions Existing in and Subsequent to the Year 1905.

But upon all of the testimony in the case, whether material or immaterial, and including all the showing of conditions which existed at or had existed at any time prior to the taking of evidence in this cause in 1908, we submit that the non-mineral value of this ground is clearly established.

The complainant produced eleven witnesses who gave evidence concerning the mineral character of the ground. Five of these witnesses, Brown, Charles Aitken, James Aitken, Gove and Haddock, had made homestead entries upon five of the quarter sections involved in this case prior to the year 1899, which homestead entries had been afterwards relinquished, and these claimants in connection with the filing of their entries had made non-mineral affidavits as to the lands applied for. Each of these witnesses was familiar with the land and, except the witness Haddock, each testified that his affidavit as to the non-mineral character of the ground was in accord with the facts as he knew them, and that he believed and still believed the affidavit to be true. The facts testified to by the witness, Haddock, showed his affidavit to be true also. (See testimony of Brown, Transcript, 275; Gove, 245; Charles Aitken, 289-290; James Aitken, 303-304, and Haddock, 325-326.)

In addition to these the Government produced six other

witnesses as to the character of the lands, every one of whom, excepting the geologist, Mr. Veatch, gave testimony either negative, or designating the character of the lands as agricultural under the established rules.

The witness Lou R. Henderson (Trans., 119), called by the Government has lived in Uinta County since 1899; is a surveyor, and has had considerable experience in and about coal mining, both above and below the ground. Henderson shows the non-existence of any coal mines or developments prior to 1900. The Glencoe mine, the nearest mine to the north of the lands in controversy, was first started in 1900, and practically no mining was done for a year or two afterwards; and the Cumberland mines, of the Union Pacific, the nearest and only mines to the south, were not opened until 1902.

Mr. Henderson states that all developments done in the vicinity of the lands in controversy have been made since 1900. Nothing prior to that time would indicate any coal in that section. Henderson states that he has never seen any coal disclosed on any of these lands, and that no one can say that there would be any coal beneath the lands. He knows of no way, geologically or otherwise, in which a person could determine that coal would continue from the outcrop down for any distance beyond what is actually disclosed. Wants and other interruptions may occur at any time. If the lands were irrigated they would be very susceptible to successful cultivation, and the raising of crops. The witness also states that at a vertical depth of more than 900 feet it is impossible to support the overhang without leaving so much coal that the mining would be impracticable. The witness gives the depths at which coal, if it continued from the outcrop, might be found beneath the lands in controversy, and in practically all of the lands this would be much over his limit of 900 feet. The witness also states that it would be impracticable as a mining proposition for anyone who did not own the outcrop to attempt to mine under the greater portion of the lands in controversy.

In fact the defendant's case could safely be submitted on the testimony of this witness.

H. E. Christmas (Trans., 150), a lawyer practicing at Kemmerer, was also called by the Government. This witness did not pretend to have any qualifications as to coal mining, nor any particular knowledge of the art. From driving over the country he knew of the outcroppings of the Kemmerer-Cumberland vein, but did not know its relation to the lands in controversy; did not know whether the coal, as shown by the outcrop, was merchantable or not, nor whether any of the lands in controversy could be worked as coal lands profitably. Mr. Christmas placed an agricultural value on the lands; stating positively and repeatedly that the lands for grazing purposes would have a rental value of fifty cents per acre per year.

Robert S. Spence (Trans., 159), called by the Government, an attorney residing and practicing at Evanston, described the lands the same as all the other witnesses, and shows that no coal was disclosed in any way thereon. The witness would not attempt to say whether the lands are coal lands within the definition of having value for coal mining purposes; and the witness frankly and flatly stated that from his knowledge he could not conscientiously make the proof required to enter the same as coal lands; that is, make the necessary affidavit, even at the present time, as to the same containing coal or having value for coal purposes.

William Newbrough (Trans., 175), a civil and mining engineer, was called by the Government, and stated that he had done a great deal of work around the mines in Diamondville and in the vicinity thereof. He speaks of the lands in controversy as being actually used for pasturage and knows of no coal showing anywhere thereon.

The Government also called Morgan Griffiths (Trans., 349), mine foreman for the Union Pacific Coal Company for the prior fifteen years; he had had 41 years' experience

in coal mining. Mr. Griffiths was foreman in charge of the Cumberland mines, adjoining a portion of the lands in controversy and was familiar with the ground in controversy and the conditions generally from north of Kemmerer to south of Spring Valley along the coal horizon in controversy in this case. Mr. Griffiths emphatically agrees with all the other qualified witnesses in the case that the mere presence of a favorable outcrop does not insure the presence of coal in paying quantities below, and that as to the lands removed from the outcrop, no one can say that such land is coal land without actually going down to ascertain what is under the surface. Referring to the lands in controversy, the witness stated that the presence of the outcrop with a dip toward the lands in controversy, without development or exploitation, would not indicate that any of the lands removed from the outcrop were coal lands, merely because the coal was dipping in that direction. He stated that no one could say that there was a ton of coal under any lands unless the coal cropped there. In the Cumberland mines (both 1 and 2) the mines were started on a very favorable and promising outcrop, but as they extended down the workings they encountered a rock want, and for a distance of two miles in these two mines the developments underground showed that there was no coal for about 70 per cent of the distance, the want having taken the place of the coal completely; witness testified there was no indication of such a condition disclosed by the outcrop or surface showing. Mr. Griffiths repeatedly and emphatically stated that no one could say that lands contained coal, or had coal, without actual development; and his testimony as to the underground conditions revealed in the Cumberland mines, adjoining certain of the lands in controversy, and which are situated upon the same Kemmerer-Cumberland vein, which must furnish the coal beneath the land in controversy if any exists, demonstrates the correctness of his views as applied to this case.

In Mr. Griffiths' testimony is found the only evidence of the existence of coal at all beneath any of the lands in controversy, and that is a reference by Mr. Griffiths to a working in Cumberland No. 3 mine having revealed coal along the east line of the north half of the southeast quarter of section 18, T. 19 N., R. 116 W.; and he stated that this development and showing was made within a year previous to the time he was testifying, which was in March, 1908.

There has been no further development upon this coal, and no showing whatever, as to the extent of it; and in any event the fact that the coal was not developed or known until some six or eight years after the land had been purchased makes the testimony clearly immaterial and irrelevant in this case.

Mr. Griffiths also gave some interesting testimony as to the character of the Kemmerer-Cumberland vein, and its value; giving details as to the vast amount of development work that has been done by the Union Pacific Company upon this outcrop from the Cumberland mine to Spring Valley, a distance of about eighteen miles. And excepting the three Cumberland mines, and a small one in the next township south, no place has yet been found to start another mine. The actual seam disclosed by the croppings was very irregular.

We desire to particularly call the court's attention to Mr. Griffiths' testimony given for the Government, it being that of a man fully competent, not alone on account of his many years' experience in coal mining generally, but from his intimate knowledge of the very vein involved in this case, both upon the surface and in the underground workings, as revealed by the extensive workings of the Union Pacific Company.

The foregoing witnesses are all that were produced by the Government on this issue, excepting Mr. Veatch, who is presumably the only man who could be found willing to hazard an opinion in support of the theory on which the bill of complaint is based. Mr. Veatch admitted that he

believed that the present litigation was largely due to his recommendations after his examination of the premises and surrounding country. At the time his testimony was given he was 29 years of age, was a geologist by profession, and had made a special study of stratigraphical and non-metallic economic geology. Mr. Veatch has had absolutely no experience in coal or other mining, and knew nothing of the economic features of mining in the Wyoming or other districts, that is, as to the cost of mining and the other features that go to make up the commercial features of coal mining and marketing, or in short, he had no knowledge of the factors which must be known to arrive at a conclusion as to whether land has value or might have value for the coal found therein.

Mr. Veatch first came to the Diamondville district and began his examination the latter part of June, 1905, and with his assistants put in something like one hundred days examining the entire country, including the coal and oil formation extending from some distance from the north of Diamondville to the State line on the south, covering a section of country for a length of some seventy or eighty miles, and a width of thirty to forty miles. As stated, Mr. Veatch's examination was made some five years after the entries on practically all of the lands in controversy. At the times of these entries there had been no development or prospecting whatsoever of the outcropping of the coal measures along or opposite the lands in controversy, and there were no mines adjacent thereto. At the time of Mr. Veatch's examination there had been a thorough prospecting of this outcrop for its entire length. The Glencoe or No. 4 mine of the appellant had been opened east of the most northerly lands in controversy and the Cumberland mines of the Union Pacific Railway, adjacent to the lands on the south, had also been opened and worked extensively. Mr. Veatch's testimony was based on the developments and conditions as he found them beginning in June, 1905, and throws no light upon the evidence

as to the conditions of the lands or their character, which existed at the time of their sale by the Government.

Under the repeated decisions of this court, above referred to, this evidence as to conditions long subsequent to the time of the entry was clearly immaterial, and repeated objection was made upon the record on this ground. No definite ruling was made upon these objections by either the circuit court or Circuit Court of Appeals, but we submit that this court should, under the rule established by it, disregard all of the evidence as to conditions not shown to exist, or not revealed at the times of the applications and entries for these lands, and if this be done, the evidence of Mr. Veatch, the only evidence in the record which can be claimed to sustain a finding that the lands in question were valuable as coal lands, under any possible theory, is eliminated.

Mr. Veatch did not go underground in any of the mines upon the vein in question, to determine the characteristics of the vein underground, but contented himself with a surface examination of portions of the outcrop, and an examination of mine maps furnished him by the operators, none of which maps showed any geology of the veins or vein formations. Mr. Veatch had no notes of his examination and could not give the details as to the correctness of his statements and his conclusions therefrom. In a general way he described the outcrop of the Diamondville-Kemmerer coal bed or beds as being persistent throughout many miles of length up and down that region; but in other portions of his testimony he showed that for long stretches opposite the lands in controversy there is no showing of an outcrop of the coal horizon, it having been entirely eroded away or entirely covered by debris or wash.

As above stated, because of Mr. Veatch's lack of knowledge of the practical facts necessarily involved, his opinion as to the possible value of the coal vein beneath these grounds, if it continues there, is worthless. As also showing that much of Mr. Veatch's information upon which he

based his conclusions, was unreliable, attention might be called to the fact that Mr. Veatch, in determining the value of the developments upon the outcrop of the vein as shown by the outcropping, went upon the theory that a three-foot vein could be worked commercially, when the testimony of every other witness and all of the facts and circumstances on this record show that five feet is the least that could be worked at any profit. It is shown upon the record that the United Mine Workers, the organization to which the coal miners belong, in adopting their scale of wages for this Wyoming district, based their charge upon a minimum of five feet of workable coal, showing that it was not contemplated that less than that width could possibly be worked. Mr. Veatch, of course, admitted that there was a limit in depth to which a coal vein could be worked, but he had no practical idea of what the depth would be upon the vein in question. If the coal continued in the vein, Mr. Veatch taking the approximate dips which he found in other places upon the vein, gave the depth at which the coal would be found beneath the lands in controversy, running from 1,400 to 1,800 feet on the east side of section 18, township 20, to 1,000 feet on the west side of section 20, township 20, 1,000 feet on the east side of section 6, involved herein, and at greater depths on the other side of the sections in controversy, thus placing the coal, if it existed at all, beneath all but a small portion of the lands in controversy at a depth below which it would be entirely impracticable to work, as shown by the testimony of all other witnesses in the case, including those produced by the Government, and as demonstrated by the actual workings of the appellant company in its mines to the north.

But even Mr. Veatch, in conclusion, was unable to say that the lands in controversy were coal lands within the accepted definition of the term as defined by this court and by the Land Office, that is, that they contained coal in quantities sufficient to make them of any value whatsoever,

but was compelled to coin a definition of his own in order to classify the lands as coal lands. Mr. Veatch's definition, and it is only under this definition that he would testify that in his opinion the lands in controversy were coal lands, is as follows (Trans., p. 392):

> "A practical designation would be that coal land is land that a practical coal man or coal expert would himself buy or advise a client to buy as an investment for coal mining purposes."

Mr. Veatch by his definition would extend the term "mineral lands" or "coal lands" to all lands which might be purchased by any one for the mining value, speculative or otherwise, which the lands might have. It is the history of every mining development, whether upon coal or other mineral, particularly during the first flush of excitement over the mining discovery, that lands in the immediate neighborhood have been bought and sold and often at high prices upon the possibility that they might be valuable for mineral and for mining purposes; and it is common knowledge that the enormous losses which have been sustained through mining investments and operations have been in large part due to transactions and investments of this character. A definition of coal or mineral lands which excludes the necessity of showing the presence of coal or mineral in any quantity in the lands themselves, but is based upon the speculative opinions or imaginations of individuals, certainly never has and never will receive the sanction of the courts, and certainly could not be laid down as a safe guide for the Land Department to follow in classifying and disposing of the public lands. Under such circumstances the inquiries of the Land Office would not be as to facts, but would be largely devoted to excursions into the realms of imagination.

Without at this time attempting to compare or contrast Mr. Veatch's testimony with that of the other witnesses pro-

duced in this case, we submit that the uncontradicted facts appearing upon the record, show the absolute worthlessness of his conclusions and opinions.

Mr. Veatch's own cross-sections (palpably sections prepared by him from the Union Pacific Company's maps, and not made from his own observations) were brought into the case by the defendant from the public report of Mr. Veatch's work and were not produced by Mr. Veatch himself. These sections show that with one or two possible exceptions, the showing along the outcrop opposite the lands in controversy absolutely forbids any hope of there being coal commercial in quantity or quality below, and the uncontradicted facts upon this record show that in every mine opened upon this coal vein the underground developments, instead of always bearing out the promise given by a good and favorable outcrop, have at places encountered long stretches of absolute wants in the coal bearing strata, and an entire absence of coal of value. A particular instance upon this record is the want in and between the Cumberland mines Nos. 1 and 2, at points where the showing upon the outcrop was most favorable, and where, if Mr. Veatch's conclusions are correct, we must find commercial coal in quantity below. As stated by Mr. Griffith, the foreman of these mines, and a witness produced by the Government, the underground development for a distance of some two miles, encountered about 7,000 feet of stone in the vein, with no coal whatever. A very similar instance of absolute disappointment in the vein below from the promise given by the outcrop is shown in the developments in the Kemmerer mine upon this vein. Mr. Veatch, as we have stated, had no idea from practical observation or experience, of the vertical depth to which this vein might be commercially mined if the coal continued in depth, but based his statements as to this feature upon what he claimed was shown by two copies of maps furnished him by the appellant company. These were two blue prints, copies of what are known as net proceed maps, used by the

Diamond Company solely for the purpose of making its return for taxation, and these maps and reports were made years after the final purchase of the lands in controversy. Under the statute of Wyoming, adopted in 1903, providing for the taxing of coal properties by taxing their net proceeds, all lands so mined are exempted from other taxation, and as shown by the testimony of the manager of the appellant company (Trans., 780-782) and (Trans., 210-212) Donald McAllister, clerk of the county board of equalization of Uinta County, a witness called by the Government, it was and had been the practice of all coal mine operators, a practice adopted after consultation with and in accordance with the construction placed on the law by the county board of equalization, and approved by it, to include in the lands so exempted from other taxation, the section in which the underground workings were situated, and also the adjoining section, whether mined or not. In connection with these taxation reports, upon the maps presented the section actually worked and the adjoining section were shown as ground being worked or intended to be worked as coal mines.

It is apparent to any fair observer, and particularly to one experienced in mining, that these maps were not prepared for any working or practical purpose, excepting the tax report, and could not be used as working maps. However, Mr. Veatch's testimony as to the value of this coal vein in depth, is almost entirely based upon what he claims to have learned and inferred from these blue prints. However, even with the use of these blue prints, and the inference which Mr. Veatch attempted to draw from them, he could not claim but that considerable of the lands in controversy were so far removed from the outcrop of the coal measures as to be worthless for coal mining purposes, even if the vein continued in depth, and coal should be found beneath them.

Without any attempt to criticize Mr. Veatch, but taking his testimony as found upon the record, we have no hesitation in asserting that not alone is his evidence entirely immaterial

and irrelevant, but also largely incompetent, because as a witness he was not qualified, and showed himself to be more or less biased and prejudiced, and his testimony was entirely unsatisfactory. He had not prepared himself by proper underground investigation, and he came into the hearing without notes or detailed data so that his testimony could be properly tested upon cross-examination and the court be put in a position to determine the correctness of his statement of facts and the fairness and reliability of his conclusions. He was unqualified because of his lack of necessary study and preparation upon the coal fields and district in question, and because he had had no practical experience in mining, and insufficient knowledge of the many problems and factors necessary to determine the value of coal lands. And finally, because he knew nothing of the cost of developing coal properties, or the mining and producing of coal in the Wyoming district, or the markets afforded for the same, or the price that might be realized for the product, and certainly no man should attempt to give an opinion as to the value of lands for coal mining or as to its comparative value for coal mining or agricultural purposes, if he were unprepared as to the facts upon which the possibilities of the land as a practical commercial proposition are based.

The apparent bias and prejudice of this witness is clearly shown by his evasive answers upon cross-examination and by his readiness to express opinions upon matters upon which he was unprepared, and many other circumstances and matters apparent, even upon a cursory reading of the witness' testimony, among which might be mentioned his approval of and bringing into this case as correct rules of geology as to the lands in controversy and safe to be taken as a guide, isolated portions of the text from Leslie's Manual of Coal, a work now obsolete, written in 1858, at a time before anything was known of the western or cretaceous fields, having no application to those fields, but having relation, as was shown upon the face of the work, only to the anthracite fields of the East.

But Mr. Veatch, even in the light of all the evidence that he could find in the summer of 1905, at least four years after the entries in question, frankly admitted that he, nor no one else, could meet the requirements of the Land Office as to proof, and particularly as to the affidavit required in the event of an entry of the land as coal lands (Trans., p. 443), and this admission was made by every witness produced by the Government interrogated on this matter.

On the whole, even if not entirely immaterial and irrelevant, because based on conditions developed subsequent to the proper period of inquiry, it is hard to understand how the testimony of Mr. Veatch could be given serious consideration in support of the issues tendered by complainant's bill.

If at the conclusion of the Government's case there was any doubt as to the determination of the issues in this case, the testimony presented by the defendant certainly proved beyond any possibility of a doubt the non-coal or mineral character of the lands in controversy; not alone at the time of the sale thereof by the Government, but in the light of every development had thereon or in the neighborhood thereof up to the time the testimony was given.

The defendant produced Robert Forrester, geologist, mining engineer and coal operator, of Salt Lake City, educated as a geologist and engineer in Scotland—in that country spending years working his way and acquiring experience in coal mining, filling positions from common mine foreman up, making a thorough study of mining methods throughout Great Britain, Pennsylvania, other eastern sections of this country, and in Kansas and Utah, and generally throughout the West—the man who opened No. 1 mine for the Diamond Coal and Coke Company. He was thoroughly familiar with the Diamondville field, and is conceded to be one of the most prominent coal geologists and experienced coal-mine operators in the entire West.

Mr. Mark Hopkins, a coal geologist and mine operator of

over twenty-five years' experience, was also produced by defendant. He has had over twenty years' experience in the cretaceous field of Wyoming and Utah; operated various properties for himself and as superintendent for others, and as superintendent for the Union Pacific Coal Company opened and superintended the operation for a year and a half of the Cumberland Nos. 1 and 2 mines, adjoining the lands in controversy; a man familiar with the entire coal horizon in controversy, beginning at Willow Creek on the north, and extending south a distance of sixty or seventy miles.

Also, Dr. James E. Talmage, a geologist and mining engineer of thorough education, and twenty-three years' experience as such, was produced by defendant. A large portion of his time has been devoted to the study of cretaceous coal fields in Utah and Wyoming.

None of these witnesses had any connection with the defendant company except their employment to thoroughly examine the lands in controversy, and to fully report the facts in connection therewith.

The defendant also produced Reno H. Sales, a mining engineer and geologist, a graduate of Columbia University, and who had had eight years' experience in his profession.

Also F. W. C. Whyte, a mining engineer and coal mine manager, educated in Scotland in geology and colliery work and who has devoted his entire time since 1895 in the development and operation of the Diamond Company's mines and other coal mines of similar character in Montana.

Every one of these gentlemen made a thorough study of the lands in controversy and surrounding country, both above and below ground, and reported in detail the result of his observations to the court, and his conclusions thereon. These witnesses made a thorough study of the surface of all lands in controversy and found no evidence of coal thereon. They state that the only possibility of any coal being found beneath the surface of any of the lands in controversy

would be from its presence within the Kemmerer-Cumberland vein or veins, the outcrop of which lies easterly from the land in controversy, and dips toward such lands. In the cretaceous coal beds of the West similar to the bed or beds in question, unless the outcrop reveals a showing of coal commercial in quality and quantity, the ground is not even deemed worth exploring; and the veins are so irregular in both quality and quantity upon their extent in dip and strike, that even where the surface showing at a particular point is of much promise, there is no assurance because of the thinning or coming in of a poor quality of coal, streaks of earth or rock, wants, faults and other difficulties met with in all of these coal fields, that the vein beyond where opened will furnish coal of any value.

These witnesses after making a thorough and exhaustive examination of the outcrop from north of Kemmerer to the Cumberland mine on the south, described the same in detail upon this record, and present with their testimony twelve sections showing, in its most favorable aspect, the outcrop of this bed or vein. These sections were selected from various points as showing the most favorable conditions upon the ground. There were many holes and openings upon the coal outcrop which showed absolutely nothing in the way of coal or a promise of coal; and if these had all been presented, a much poorer showing would have been made as to coal conditions on the outcrop in controversy.

The verbal testimony of these gentlemen and the pictures of the actual conditions represented by these sections, show that this outcrop has been thoroughly prospected throughout its entire length; that there is not a place, from the Glencoe mine (the most southerly mine of the Diamond Company) to the Cumberland mine, covering all of the outcrop lying opposite the lands in controversy, with one exception, that would justify even a further exploration or prospecting; and that exception is in what is known as the "Daly Hole," a short distance south of the Glencoe mine, and Diamond drill

hole No. 4, and the underground workings of the Diamond Company demonstrate that there is no coal of value at that point.

The witnesses also made thorough underground investigations to obtain such light as could be had, as to the characteristics of the vein, and the relation of the underground and outcrop showing of all of the mines of the Diamond Company. These underground investigations illustrated clearly the uncertainty and disappointment invariably met with in the practical operations upon this vein, showed the existence of large wants and practically an entire absence of coal, notably one between the south mine of the Kemmerer Company and Diamondville mine No. 1, over a mile in length, between mines Nos. 1 and 2 and 2 and 4 of the Diamond Company, and the falling off in quantity and quality of the coal in the workings of the Diamond mine No. 4; Glencoe mine extended southerly in the direction of the lands in controversy, showing that nothing could be hoped for in that direction, also showing that the present Diamond mines Nos. 1 and 2 in their workings at depth, because of the weight of the roof or overhang or covering, which in addition to other difficulties prevented the mining of more than one-half of the coal found in the veins, portions being required to be left as pillars, have reached the limit to which mining can be practically carried on, at a depth of about 750 feet vertically beneath the surface.

These underground investigations also clearly proved that unless the outcrop be of sufficient promise underground development would be idle, and that even a favorable outcrop gives no assurance of profitable workings below.

These gentlemen also produced, as showing the actual conditions, many section maps from each of these mines, all of which are found upon the record.

The witnesses also went fully into all of the items of cost and other factors which enter into practical coal mining and which must be considered in determining the success of

any coal-mining venture. With their testimony copies of the working maps of the various mines were introduced in evidence, showing the actual conditions of the underground workings and corroborating the testimony given by the witnesses.

The uncertainty of developments upon cretaceous coal veins of the West is shown by the testimony of Mr. Hopkins, wherein he details some seventy miles in Wyoming in the vicinities with which he is familiar, which have been opened since 1870, and from forty-five to fifty of which had been permanently abandoned prior to the year 1906.

In conclusion, the witnesses Forrester, Hopkins, Talmage and Sales unqualifiedly state that in their opinions none of the lands in controversy had or have any value because of any coal that may be contained therein; that from the outcrop and underground developments there is no evidence that any of the lands contain coal in commercial quantities. As to the greater part of the lands in controversy, if any coal underlies them it is at such a depth that it could not be profitably exploited or extracted. As to practically all of the lands in controversy, even if they contain coal in commercial quantities and quality, without the ownership of the outcrop they could not be opened and operated successfully.

In the opinion of the Circuit Court of Appeals it is stated that the testimony of defendant's witnesses as urged amounts to a condemnation in general of the practical value of the coal deposits of the West which are found in cretaceous formations. The testimony of these witnesses is based on actual facts observed not alone upon the coal vein in controversy, but in other sections of the West, and their statements in these particulars stand uncontradicted upon this record. In fact, they are in practically every detail corroborated by the only witnesses produced by the Government having practical experience and knowledge, the witnesses Henderson and Griffiths, but no better corroboration of the views of these witnesses as to the coal beds in question can be given than the

uncontradicted fact shown upon this record regarding this coal vein, which is that although it has been thoroughly prospected and searched for its entire distance, extending from sixty to seventy miles, by corporations with ample means, for the purpose of opening up additional coal mines, the result of the prospecting development has been such that there have been only opened up the mine of the Kemmerer Company, the three mines of the appellant company, and the three mines of the Union Pacific Company, all together covering an extent of about ten miles on the vein, or approximately one-seventh of its length.

We have not dwelt at length or particularly upon the testimony of the witnesses produced by the defendant, for the reason that we feel this court will be first interested in learning whether there is sufficient proof of the character required by the decisions of this court in an action to vacate a patent to sustain the findings and decree in favor of complainant, and in that respect we are satisfied this court will find the record lacking; so that further inquiry would be avoided. Moreover, we assume that the court will read the evidence, and if it does so we suggest without fear of contradiction that the court will find within defendant's evidence uncontradicted facts which will irresistibly lead to the conclusion that there was no fraud or irregularity in the purchase of the ground in controversy.

The entire situation was summed up in an answer made by the witness Dr. Talmage when, undergoing cross-examination by the Government's counsel, (Trans., p. 1235) he made answer to questions propounded to him as follows (and we wish to call particular attention to the fact that the basic facts upon which this answer is founded are uncontradicted on this record):

> "Q. That is what I want to know. Now, Doctor, taking it as an assumption that in these mines during the time from the opening of these mines—(referring to mines in the locality) I will say from 1901

when these mines began to be operated up until 1905, when the last of them were entered—taking those years and assuming that several millions of tons of coal were taken out of their mines, not the Kemmerer, not the Cumberland, not the Union Pacific, but their mines which you have visited—taking into consideration the proximity of these mines to the lands involved in this controversy, would you be willing to testify that during that period you would have been prepared to make an affidavit that these lands, the brick colored lands in controversy are essentially non-coal lands?

"A. Yes, I would have done so unhesitatingly.

"Q. Why?

"A. Because I understand by non-coal lands and I should indicate in my affidavit, lands on which no coal has been discovered, lands beneath which no coal was known to exist, lands in this case beneath which coal might exist, but if it did exist, judging from the dip of the outcrop, it would be at too great depth to be at all valuable, and moreover, it would occur, if it occurred at all, under conditions which would make it unworkable because of the very unstable roof, because of the unfavorable floor, lands under which no one could possibly predicate workable coal to occur because of the great variations shown in the coal where it is exposed; lands which could have nothing more than a speculative value as coal lands; and in making my affidavit I would be governed by the law as I understand it of the matter, which would indicate to me that that was the only kind of affidavit that I could make; and I should consider that I was perjuring myself if I made an affidavit that it was mineral land, because I know that no coal has been or ever will be discovered on the surface of these lands, and because I have no other indication at all that coal exists beneath these lands."

This answer, which is in its terms a beautiful and succinct summing of the entire case by a witness of unimpeachable integrity and of unexcelled authority, presents so clearly, so forcibly and so convincingly the entire situation, that to attempt to add to it, explain it or modify it would be an unnecessary undertaking.

Other Matters Referred to in the Opinion of the Court Below.

There are a number of somewhat minor matters which are referred to in the opinion of the honorable Circuit Court of Appeals, and to which that court seems to give some weight in its decision, every one of which matters we submit is immaterial to the determination of the sole issue presented; and further, we think the court has misconceived the evidence upon the record in its conclusion as to several of these matters.

Point V.

General Reputation of Lands as Coal Lands.

It is stated in the opinion of the Court of Appeals that for many years prior to the entries in 1899 the lands along the ridge and in the valley west of the outcrop were generally regarded as coal lands by people living in that section of Wyoming, and that such was their general reputation.

Certainly evidence of this character cannot be seriously considered in determining the coal or non-coal value, or character, of specific parcels of land. If this proceeding were one of contest in the Land Office in the first instance, such testimony would be entirely inadmissible, and it is particularly so in an action of this character, brought years after the issuance of patents. But there is practically no evidence upon the record to support such a finding. The only witnesses who gave any testimony referring to such

general reputation were Droubay and Ball. The evidence of the witness Droubay along this line is found in the transcript, pages 335-337, and while he made the general statement on his direct examination, on cross-examination it was clearly shown that he was not testifying as to general reputation of the lands in the community, but was basing his statement upon specific statements of one or more men.

The witness Ball (Transcript, 341-2 and 346) showed that he was simply basing his statement on some general talk about lands lying south of Diamondville; he did not know what particular lands were being talked about, and his testimony was simply to the effect that there was a coal country somewhere up in that section.

Point VI.

Price Paid for the Soldiers' Additional Homestead Scrip.

In the opinion of the Circuit Court of Appeals it is also stated that the proof shows conclusively that the company in purchasing the soldiers' additional homestead rights paid therefor at the rate of from $6.00 to $13.00 an acre. From this the Circuit Court of Appeals undoubtedly drew the inference that, the lands not being worth anywhere near this amount for agricultural purposes, there must have been some ulterior purpose in going to this expense to secure the ground. In the first place, the evidence is entirely immaterial for the reason that if the lands were not coal lands in character at the time of their entry it is immaterial what value the applicants may have placed upon them, or to what expense the applicants were willing to go to secure the lands. The Government invited the purchase of the lands at the prices and conditions fixed by it. If these were compiled with, it is immaterial that applicants may have gone to additional expense to secure them; but beyond this, there is no material evidence that

such price was paid for this scrip. This statement in the opinion must necessarily be based upon the testimony of Mr. Lamoreaux (Transcript, pp. 186-188). Mr. Lamoreaux was special agent for the Government, engaged in procuring evidence for this case. He testified that in May, 1907, long after the suit was brought, he had had a conversation with Mr. Thomas Sneddon, who represented himself to be superintendent of the defendant company, and that Mr. Sneddon had stated, as the witness remembered the conversation, that the price paid was from $6.00 to $13.00 an acre. This scrip transaction had necessarily occurred some time prior to May, 1899, more than eight years before the conversation took place. The showing upon the record is that if Mr. Sneddon was connected with the company at that time it was in a subordinate capacity, and there is no showing whatever as to how he obtained his information. The mere fact that Mr. Sneddon was superintendent of the company at the time of the statement to the witness in 1907, would not confer upon him authority to bind the company by a statement as to a transaction which had occurred some eight years before, and from every viewpoint the statement was objectionable as hearsay, and incompetent, and such objection was made (Trans., p. 188). Moreover, the improbability of the conversation with Mr. Sneddon having occurred at all, or certainly its inaccuracy, is shown by other evidence produced by the Government.

The witness Henderson (Trans., pp. 125-127) was interrogated regarding a conversation that he had with Mr. Sneddon in 1901, wherein Mr. Sneddon had asked him all about the use of scrip, its price, and how it could be used. Certainly, if Mr. Sneddon had personal knowledge of the purchase of this scrip some two years before, he would not have been making these inquiries of Mr. Henderson, and besides Mr. Henderson (Trans., p. 127) showed that the price of the scrip in 1899 to 1901 ranged in price from $2.50 an acre to $4.00 an acre (Trans., p. 127).

Point VII.

The Statement of Thomas Sneddon to County Official.

It is stated in the opinion of the Court of Appeals that in 1898, "the year prior to the location of the soldiers' additional homestead rights upon the land in controversy, Mr. Sneddon, then in the service of the defendant company, suggested to a county official that they have lands in that immediate locality taken up by settlers and then sell them to some coal company."

Such evidence is palpably immaterial and was objected to by defendant. No connection between Sneddon and the defendant company at this time is shown, and further, if such statement was made at a time when he was employed by the company, the record shows that his employment was in a most subordinate capacity, and surely every loose statement made by a pit boss without proof of authority in him cannot be used to prejudice rights of the appellant corporation; but this finding of the Court of Appeals is based upon the statement of the witness Nesbit (Trans., pp. 148-150). The witness (Trans., p. 149) states that the lands which Mr. Sneddon referred to were situated in townships 16 and 17, range 120, and as all of the lands in controversy are situated in ranges 116 and 117, the lands to which such statements referred must have been situated a distance of from twelve to eighteen miles from those in controversy.

Point VIII.

Cash Coal Entry Made by Thomas Sneddon.

Reference is made in the opinion of the Circuit Court of Appeals to the sworn application made by Thomas Sneddon on March 28, 1898, upon application to purchase the west half of the west half of section 20, township 20

north, range 116 west, which is one of the pieces of land afterwards entered under the soldiers' additional homestead scrip. This coal filing was first attempted to be made in October 1, 1897, and March 28, 1898 (Trans., p. 981), and was afterwards relinquished on June 21, 1899. In April, 1898, a month or so after the filing of this coal application (Trans., pp. 176-178), the record shows that Mr. Sneddon procured Mr. Newbrough, a surveyor, to make a survey of this section to locate the corners and quarter corners thereof. The evidence of the chainman or assistant, who was with Mr. Newbrough, the witness Gove (Trans., pp. 227-228), showed that the survey was being made and was run a second time because of some mistake in the location of a corner, and that Mr. Sneddon was having the matter straightened out. In view of the fact that the outcropping of the coal measure extends across the west half of the east half of this section 20, and the fact that this survey was made to correct some mistake in the corner, and the further fact that after the survey had been made the previous filing was relinquished and abandoned, we are led to the irresistible inference that the filing was first placed upon the west half of the section through error in mistaking the section corner, and that it was the intention to place it upon the portion of the section where the coal measure outcropped. However, there is no attempt whatsoever to show that Mr. Sneddon, in making this filing was not acting individually, and for his own purpose, and no attempt made to connect it with the defendant corporation. In fact the testimony conclusively shows (Trans., pp. 182-257 and 770) that during this period of the year 1898 Mr. Sneddon was not in the employ of the defendant corporation in any capacity. Further, such evidence is entirely immaterial as the evidence shows beyond any contradiction that there never has been any coal showing upon the portion of the section covered by this filing, and the facts stated in the affidavit were incorrect. The filing was never completed, but was relinquished, and if there was any fraudulent purpose in Mr. Sneddon it was never consummated.

Point IX.

Affidavits Made by Sneddon and Harrison in Connection with Scrip Filings.

Reference is made in the opinion of the Court of Appeals to the statements in the affidavits made by each of the entrymen accompanying the soldiers' scrip applications, stating that the land did not, to his knowledge, contain any deposit of coal, and that it was essentially non-mineral lands, and that the applications were not made for the purpose of fraudulently obtaining title to the mineral lands, but with the object of securing said lands for agricultural purposes. The statements that none of the lands in controversy contained any vein or lode or deposit of coal to affiant's knowledge, is shown to be true beyond doubt by the evidence upon this record. The statement that it was essentially non-mineral land was a correct one under the standard adopted by the Land Office and by this court, and of course this statement must be taken to have been made with regard to the presence of coal in the land and the arbitrary classification followed in such cases. The statement that the application was not made for the purpose of fraudulently obtaining title to mineral land is also correct as the same, according to all of the evidence, and according to the Department rulings, was not mineral land, and the Land Department itself, upon a full presentation of all facts that could have been known to Sneddon or anyone else, would unquestionably have ruled that the land was non-mineral, and the statement correct, and as shown by the testimony of practically all of the witnesses under the law and the facts, no criticism can be made of such statement. As to the statement in the affidavit that it was made with the object of securing the land for agricultural purposes, we submit that the record does not show such statement not to have been true. Stronger corroboration of the truth of this statement could not be had than by inquiry as to the uses that have been

made of the land since possession of the same was received from the Government. No attempt has been made to develop or mine any coal therefrom, and the sole use thereof has been an agricultural use, that of grazing. Beyond this, the testimony of the witness Whyte (Trans., pp. 774-5) shows the additional non-mineral purposes for which the land was desired. Furthermore, no fraud could be predicated upon this latter statement as to the object with which the lands were purchased from the Government, for the reason that such a requirement in the affidavit was beyond the authority of the Land Department to make.

When lands are shown by an applicant to be within a certain class, and he complies with the Government's invitation to purchase the same, it is immaterial what his ultimate purpose may be. Where lands are shown to be mineral in character, and one makes a proper location thereon, does the necessary representation and improvement work to entitle him to patent certainly the Land Office could not refuse him a patent because he declined to make an affidavit that he intended to procure the land mainly for mining purposes. Among his purposes may be that of constructing a residence upon the same, using a portion of it for a townsite or for purposes of industry, and if he has complied with the mineral-land acts, paid the Government's price, the additional purposes for which he may desire the same are entirely beyond the power of the Land Department to control. The form of affidavit used upon applications to purchase with soldiers' additional scrip seems to be the same as that required from an original homestead claimant. The law and Land Office practice in connection with the acquiring of a homestead by possession and use is entirely different. There the applicant is required to show that he is procuring the land for his own purposes, and he has no right to sell or dispose of the same or to acquire the same for the purposes of sale. Under the homestead scrip provisions, the situation is entirely different. Under the amendment of 1894 it is expressly made assignable; so that

one procuring the certificate from the soldier has the right to purchase lands properly purchaseable under such scrip for any purpose whatsoever, and there is no authority, express or implied, authorizing the Land Department to restrict the right of purchase by limiting the purposes for which it may be used. There being no authority in the Land Office to insert this additional requirement in the affidavit, under the decision of this court in United States *vs.* Williamson, 207 U. S., 425, pages 459-462, no perjury could have been committed, and therefore no fraud committed upon the Government. Furthermore, the consideration of this question brings us again to the main inquiry as to whether or not the lands were properly purchaseable under the homestead scrip. If the Government has received all that it was entitled to receive, no fraud or wrong has been committed.

It is not and cannot be claimed that Sneddon, or any one else, had any peculiar or special knowledge whatsoever bearing on the character of these lands. All evidence as to their character was open to every one. It must be presumed that the usual examination of the lands was made by the Government agents in accord with the Land Office practice, after the filing of the scrip applications, and prior to the allowance of the entries. If the lands were not such as to only be enterable under the coal-land act, under the rules and decisions, then any belief or surmise on Sneddon's part would have been entirely immaterial.

Even if the statement, as to the proposed agricultural uses of the land, was untrue and fraudulent, if the lands were properly enterable under the scrip, no fraud was consummated because the Government was not in any wise injured. See—

Ming *vs.* Woolfolk, 116 U. S., 599;

Marshall *vs.* Hubbard, 117 U. S., 415;

Bigelow on Frauds, pp. 540-1; edition published in 1888;

Volume 2, second edition, Pomeroy's Equity Juris., sections 879, 880 and 890.

Point X.

Homestead Entries Subsequently Relinquished.

Considerable stress seems to have been laid by the Court of Appeals upon evidence introduced in the record by the Government as to certain homestead entries made upon portions of the lands in controversy about the year 1898, all of which were reliquished before the purchase of the land under the soldiers' additional scrip.

Considerable evidence was presented in the record by the Government in connection with five homestead entries covering 600 acres of the land in controversy, which it is claimed the evidence shows were made in behalf of the defendant corporation in the year 1898 under fraudulent agreements by which the homesteaders were to secure title to the land and then transfer it to the defendant company. The evidence regarding this is shown in the testimony of the witnesses Nesbit, Lees, Haddock, Gove, Droubay, Ball, Brown and Charles and James Aitken and Hopkins. While slight reference was made to other entries, the only definite references as to entries made are by the witnesses Gove, Haddock, Brown and Charles and James Aitken. We will not take up the time of the court in discussing this evidence for a number of reasons; first, if the effect of the evidence is to show fraud which resulted in anyway in injury to the Government, it is outside the issues in the case, as there is no charge of such fraud in the bill of complaint; second, the evidence regarding such homestead entries fails to sufficiently or properly connect the same with the defendant corporation. It is shown by the record and by the transcript references hereinbefore made, that Mr. Sneddon, who is referred to in connection with these entries by some of the witnesses, was for a period of time, and probably for the period of time covered by these entries, not in the employ of the defendant corporation, and it further ap-

pears that the making of the homestead entries in the first place was undoubtedly the individual act and enterprise of Mr. Henry Burrell, for a period the acting superintendent of the defendant company. The evidence uncontradictedly shows that about the time, or subsequent to the making of these five homestead entries, there was a change in the corporate ownership or stock ownership of the defendant corporation, and that upon the new management taking hold in 1898 or 1899, it caused relinquishments of all of these entries to be made, compromised the claims of the individuals making them, or some of them, and paid Mr. Burrell a considerable sum of money for a claim made by him in connection with the relinquishment of the entries (Trans., pp. 768-774).

The fact that there was an entire change of stock ownership and control and management of the appellant corporation, and the undisputed evidence that the only acts performed by the new management in connection with any of these homestead entries was to cause their relinquishment and cancellation is most material, because while the corporate responsibility was the same, irrespective of its stock ownership, the evidence shows that after the present management had taken hold no effort was made in any way by appellant to acquire or to assist in the acquiring of the Government lands through any of these homestead entries, but on the contrary the appellant corporation took steps to cause the relinquishment and cancellation of the homestead entries, and therefore the evidence as to its acts in connection with the relinquishment cannot be taken as a ratification of anything theretofore done in connection with these homestead entries, or of showing the corporation's connection with them, and under this evidence it cannot be claimed that the making of these homestead entries in any way tended to show any intent on the part of the appellant to acquire the lands in question by fraudulent means, as prior to the time of the making of the scrip entries, the only acts of the corporation and its management, in control

at the time of the making of the scrip entries, had been to obliterate and cause to be abandoned any attempt to obtain the lands through the alleged fraudulent homestead entries. Furthermore, these alleged fraudulent homestead entries only affected three of the sections, covering 600 acres of the lands in controversy, to-wit:

Under the Brown entry, the south half of the northeast quarter, the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section 6; under the Haddock entry, the north half of the southeast quarter and the north half of the southwest quarter of section 12; under the Gove entry, the south half of the southeast quarter, and the south half of the southwest quarter of section 12; under the Charles Aitken entry, the east half of the northwest quarter of section 18, in township 19 north, the west half of the northeast quarter of this section being also included in this entry, but this latter parcel is not among the lands in controversy in this action; under the James Aitken entry, the northwest quarter of the southeast quarter of section 18, in township 19 north; the James Aitken entry also included the southwest quarter of the southeast quarter, and the east half of the southwest quarter of this section 18, but the two latter parcels are not among the lands in controversy in this action.

It is clearly shown that if there had been any fraudulent purpose in the first place, for which the defendant corporation was responsible, the same was abandoned prior to the purchase of the grounds in question in a proper and legal manner through the soldiers' additional scrip.

The only materiality suggested by the court of appeals in connection with this testimony is in the suggestion that it tended to show that there was a purpose on the part of the defendant corporation persisted in to acquire the lands fraudulently. If the patents in this case are to be vacated it must be through evidence in support of the charges of fraud contained in the bill of complaint, and that fraud, by the bill, is limited to the fact that through false repre-

sentations as to the non-mineral character of the land, valuable coal lands were obtained through agricultural entries. If any other fraudulent act or purpose existed it certainly cannot be used as a basis for a finding or decree in this case, but it is not claimed that any act or purpose connected with these original homestead entries in any way entered into or affected the subsequent purchase of the lands with the homestead scrip, so that any previous fraudulent purpose which was abandoned, or which did not assist in any way in the procuring of title to the lands, is certainly outside the case. A fraudulent purpose not consummated, can have no bearing upon the matter, and even if it were proven that the defendant corporation in this case had shown a willingness or anxiety to procure the land by fraudulent means, if it had abandoned such purpose, or the lands were not acquired through such fraudulent purpose, evidence to that effect certainly cannot be used to void a purchase not made through fraud, and through which the Government was in no wise injured.

We have gone at some length into these minor, and, plainly, in our opinion, immaterial matters found in the decision of the lower court, for the reason that considerable stress seems to have been laid upon such matters by that court, and through so doing we respectfully submit that court must have failed to give proper weight to the competent and material evidence upon this record upon the issues tendered by the bill. We feel that the presence of such matters upon the record has wrongfully prejudiced the case of the defendant, and has at least confused the issues upon which the respective rights of complainant and defendant should be determined.

In order to assist the court, and to put beyond question, our contention that there is no evidence in this record sufficient to sustain the decree ordered entered by the court of appeals, and to demonstrate not alone the lack of evidence tending to establish the mineral character of these lands, but also to show that the greater portion of the Govern-

ment's evidence absolutely establishes the non-mineral character of the land under the rules established by this court, we have thought it helpful to attach hereto an addendum marked Exhibit "A," in which the court will find conveniently set forth a synopsis of all of the evidence on this branch of the case submitted by the Government's witnesses.

In conclusion we respectfully submit that under the evidence in this case, and an application thereto of the proper rules of decision as to the character of the lands in controversy, the charge that such lands were not properly entered under the homestead scrip must fall. Moreover, even under the rule of decision as to mineral lands, evidently adopted by the Circuit Court of Appeals, if the inquiry be limited to the period to which this court has repeatedly said it must be limited, that is, to the times of making entries of the land, there can be no question but that the bill must be dismissed upon this record. But beyond that, upon a proper consideration of all of the evidence in the case, even under the conditions existing at the time of the taking of the evidence, some five years after the entries in question, we submit that it is demonstrated beyond a reasonable doubt that even at that period the lands in controversy had little, if any, value for coal mining purposes.

We respectfully pray that the decree and decision of the Circuit Court of Appeals be reversed and the decision of the circuit court, dismissing the bill, affirmed and approved by this honorable court.

Respectfully submitted,

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Solicitors and of Counsel for Appellant.

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ADDENDUM "A."

Evidence Given by Government Witnesses as to the Character of Lands in Controversy.

The first witness called on this branch of the case for the Government was Mortimer H. Grant, who made the official surveys of these lands in the year 1874. The notes of his survey were introduced in evidence and the witness had practically no recollection of the lands except as refreshed by the notes. The witness testified to the survey of three townships, including one of the townships in which some of the lands in controversy were situated. The witness stated from his notes the general character of the lands, being what is known as sage brush or grazing lands, and said that he did not consider them agricultural lands except in the valley of Ham's Fork, where witness stated the land was first rate (Trans., p. 46).

It is unquestioned that the lands in controversy extend from and are adjacent to this valley of Ham's Fork.

The witness further stated that in these three townships he found coal outcroppings, but the only section of land in controversy upon which he found coal and the only section in controversy upon which he classified in his return to the Surveyor General's office as coal land, is section 20, in township 18 north, range 116 west; and it is admitted that the coal showing upon which he based this is not upon the portion of section 20 in controversy in this action; title to the portion upon which he observed coal having been obtained under a coal application.

The next witness called on this branch of the case by the Government was Lou Henderson, a civil and mining engineer, who had resided in the immediate locality before the building of the railroad down this valley, and who was familiar with the entire situation, a very intelligent man,

and who should be regarded as one of the most competent experts who testified in the case.

The following excerpt will show the general character of his testimony (Trans., p. 133):

> "Q. Now, then, between these two veins of coal, or between these two series of coal veins, the one on the east side of the valley and the different veins on the west side of the valley, do you know of any coal in the intervening space?
>
> "A. No, sir.
>
> "Q. As a matter of fact, there is absolutely no coal in the intervening space?
>
> "A. There never has been any discovered to my knowledge.
>
> "Q. And that includes all of the land that is in controversy in this case, and to which your attention has been called, does it not?
>
> "A. Yes, sir.
>
> "Q. Now, then, you have testified that, measuring the inclination or dip of the vein and assuming that it maintains its dip to the westerly until it would be beneath the surface of these lands in question, you would find coal at from a thousand to thirteen hundred feet?
>
> "A. From thirteen hundred feet upward; that is on section 18 I am speaking of, 18-20-116.
>
> "Q. On some of the other sections that are involved, as for instance, section 12 in township 19-117, and 18, 30 and 6 and 19 in 116, the depth at which coal would be found, if at all, would be very much greater than the distance that you have given?
>
> "A. I will have to refer to the map a little; I can't tell offhand. In 20 it would be less, and it would be less in all of them except 12-19-117.
>
> "Q. Now, when counsel for the Government asked you as to the depth at which coal would be found

under these sections, that, of course, is entirely problematical, is it not?

"A. Yes, sir.

"Q. The only basis that you have for making any deduction is assuming certain facts to exist which, of course, you don't know to exist?

"A. Yes, sir.

"Q. As for instance, you don't know what the inclination of this vein is except where you have measured it?

"A. Yes, sir.

"Q. And you are assuming that it will maintain about the same inclination?

"A. Yes, sir.

"Q. You are also assuming that it will maintain its existence?

"A. Yes, sir.

"Q. And of that fact, of course, you have no knowledge?

"A. No, sir.

"Q. So that, asking you the question fairly, from your knowledge you cannot say, as a matter of fact, can you, that beneath the surface of any of these lands there is any coal?

"A. Not positively, no.

"Q. But you can say positively that, upon the surface of the lands themselves, there is no coal and no coal outcrop?

"A. I never have seen any on these particular lands in question, on any of these particular lands in question."

Referring to the condition of the vein found along the strike, and showing the absurdity of predicating an opinion on the outcrop, the witness says (Trans., p. 135):

"Q. But there are lean places in the strike?

"A. Oh, there is what they call 'wants' all over the coal.

"Q. So that, because you can follow this line of outcrop continuously in a northerly and southerly direction, you do not mean to testify that there is marketable coal at all places along it?

"A. Oh, no." (Trans., p. 137.)

"Q. Now, Mr. Henderson, you have had considerable experience in coal mining and with coal veins, have you not?

"A. More or less.

"Q. And particularly with this particular vein on the east side of the valley?

"A. Yes, sir.

"Q. That is the only commercial vein in this section of the country, is it not?

"A. Yes, the only commercial vein.

"Q. Now, you used the word 'want' a little while ago. Just tell us for the sake of the record what you mean by a 'want.'

"A. 'Want' means, geologically speaking, where no coal remains; that the vein is still there, but the coal is not there. It is in want; it has been replaced by dirt or rock, but the vein is still there.

"Q. What have you to say with reference to whether or not it is a customary or usual thing to find what you term a 'want' in a coal vein?

"A. Yes, it is very common.

"Q. And with reference to this particular vein, is it or is it not a fact that these wants are frequent?

"A. Yes, they are very frequent in all the mines that are working.

"Q. Now, these wants are of more or less indeterminate length along the strike, are they not?

"A. Yes, and in the mine.

"Q. What is the extent of some of the wants that you have seen in this particular vein?

"A. Well, the largest one that I ever measured in the vein itself is in No. 3 Frontier, belonging to the Kemmerer Coal & Coke Company, which runs some twelve hundred feet, where I have measured it, and that is the largest that I have measured.

"Q. You don't mean to testify that there are not in this vein wants of much greater length along the strike than that?

"A. I don't know of any; that is the largest one I know.

"Q. But you don't say there are not?

"A. Oh, no, I don't say there are not.

"Q. Of course, if a man should happen to strike a piece of land that contained one of these wants along the strike, that land would not be valuable for coal, would it?

"A. Not unless he drove past it.

"Q. Now, with reference to this vein, you know where Kemmerer is, of course, and Diamondville?

"A. Yes.

"Q. Is the coal continuous along the strike of this vein between Diamondville and Kemmerer?

"A. No, sir.

"Q. As a matter of fact, do you know No. 1 mine of the Diamondville Coal & Coke Company?

"A. Yes, sir.

"Q. What is the character of the vein——

"A. Between Diamondville and Kemmerer?

"Q. No, I didn't finish the question. What was the character of the coal vein where No. 1 slope was sunk?

"A. No. 1 slope, Diamondville?

"Q. Yes.

"A. Why, she made coal right away, right at the

surface. There was commercial coal within fifty feet.

"Q. How thick was the vein there?

"A. I forget; I couldn't exactly remember; I think about fourteen feet.

"Q. As a matter of fact, it was one of the best disclosures along this entire vein?

"A. Yes, one of the very best.

"Q. And that coal continued down to some extent?

"A. To about the fourteenth entry, I think, or the thirteenth.

"Q. And yet, in driving north and south in the entries along that vein, it absolutely pinched out, did it not?

"A. I believe they have got fairly good coal to the south, but none to the north.

"Q. Going north it cut off absolutely?

"A. Yes, sir.

"Q. Now, there are other wants. Are you familiar with the Kemmerer coal mines, going south?

"A. Yes, sir.

"Q. Do they likewise pinch out?

"A. Yes, there is a want between the two; there is a want there of a mile and a half, that is, as far as proven.

"Q. Now, has it been your experience in this particular section of country that some large areas which were supposed to contain this particular coal vein, and in opening which considerable exploitation had been done, showed that there was no coal on the surface?

"A. Why, in a way. I have noticed one or two holes in township 19, range 116 that shows a want. I have heard there was a want there, but I never examined it enough, only in one or two holes.

"Q. You don't know anything about section 30,

that lies between Cumberland No. 1 and Cumberland No. 2?

"A. The property of P. J. Qualey, yes, sir.

"Q. Do you know anything about whether or not there is coal under that section?

"A. Why, I know that on the croppings at the surface Qualey had a very, very fine indication, but I have been down in No. 2 Cumberland, and, driving south they ran into want. I never was in No. 1 Cumberland, but they have run into the same fault or want down there, and that proves that section, or the lower half of that section worthless for coal.

"Q. So that you have a concrete illustration right here in the immediate vicinity of this land and on this identical vein of a section that, at the outcrop promised exceedingly well for a coal mine, and upon exploitation became valueless?

"A. Yes, sir.

"Q. Now, then, I am going to try and take you back to the year 1900, and to 1898 and prior to that.

"A. Yes, sir.

"Q. Well, you only go back to 1899?

"A. Yes, sir.

"Q. Well, in 1899 and the early part of 1900, or we will put it before No. 4 mine was started, was there any exploitation or development of any kind upon this coal outcrop at any point east of any of the lands in controversy?

"A. Yes, sir.

"Q. Whereabouts?

"A. Still east of these lands—why, there was some holes. I have never seen—when I first came in there in 1899 I found still east of this vein that we are speaking of, I found coal veins.

"Q. You misunderstand me, Mr. Henderson; I just wanted to call your attention to the development along this particular vein.

"A. Oh, yes.

"Q. Whether or not there was any development along this particular vein east of any of the lands in controversy in this section at that time?

"A. No, not that I know of; I never seen any.

"Q. As far as this country has been developed into a coal country, if at all, it has all been since that time, within comparatively recent years, since 1900?

"A. All since 1900, yes, sir.

"Q. Prior to that time there was absolutely nothing done here that would indicate whether or not there was going to be a coal country there or no?

"A. No." * * * (Trans., p. 140.)

"Q. Now, with reference to the surface lands, Mr. Henderson, they are alkaline, you say?

"A. Yes, sir.

"Q. They are of the same general character as what we usually designate as rolling prairie lands, are they not?

"A. Yes, sir.

"Q. They support some native vegetation and grasses?

"A. Yes.

"Q. And as a matter of fact the grasses which do grow upon this character of land are exceedingly nutritious and valuable as fodders, are they not?

"A. Yes, they are good grazing lands.

"Q. When you say that there is no farming in that immediate vicinity, you mean that no attempt has been made to cultivate the lands?

"A. No, there has been no attempt to cultivate the land.

"Q. If the land was irrigated, it is susceptible of cultivation, is it not?

"A. Oh, yes, if it was irrigated it would be very susceptible of cultivation.

"Q. Not only would it be possible to raise crops, but you are quite satisfied that they could be abundantly and profitably raised? You could positively raise crops with irrigation?

"A. Yes, sir."

We submit there is very little in the foregoing witness' testimony that can add comfort to the Government in this case.

A. T. CHRISTMAS, a Government witness residing at Kemmerer, and who holds also the position of United States commissioner, was the next witness examined by the Government on this branch of the case. Note the following excerpt (Trans., p. 154):

"Q. Now, Mr. Christmas, of course, you do not qualify as a geologist, do you?

"A. I do not.

"Q. You do not wish to be understood as expressing any geological opinions with reference to the character of these lands, the formation or the occurrence of coal?

"A. I do not. I think I qualified my reply by saying that I simply gave it from casual observation, and I replied in that way.

"Q. You never made any study of these lands for the purpose of making an accurate, close and correct classification of them?

"A. Absolutely not.

"Q. The information which you possess, Mr. Christmas, is that which a person would ordinarily acquire in simply driving over and observing the country?

"A. Exactly.

"Q. Now, in driving from Glencoe down to Cumberland No. 1 and No. 2, what road did you travel?

"A. In the last two years there is what is known as the upper road, which is a direct line from Glencoe to the Cumberland properties, and for the last two years I used that one. Prior to that I have taken what is known as the lower road, which is a winding road through the valley to Cumberland.

"Q. Does this upper road cross any of the premises that are really in controversy in this action?

"A. I am unable to answer that question.

"Q. As a matter of fact, Mr. Christmas, you do not pretend to know exactly, upon the ground where the legal subdivision lines are placed, do you?

"A. I do not, only as a general conclusion.

"Q. Are you, in fact, familiar by designation, even, with the particular land that is in controversy here?

"A. I am not, any more than I have located in my mind certain lands in townships 18 and 19 in range 116; that would be as far as I could go.

"Q. And you know that up there in this valley somewhere is the situs of the ground embraced in this action?

"A. Yes, sir.

"Q. Now, when you spoke of the coal outcropping which you had observed, you referred to the coal vein which traverses on its strike through the foot hills on the east side of the valley, I presume?

"A. Yes, sir.

"Q. You don't know that any part or portion of that coal vein is within or beneath any of the lands that are actually in controversy in this case?

"A. I could not say that it was, no, sir.

"Q. Now can you tell the court how far east of the east lines of any of the ground actually embraced within this controversy, this coal outcrop occurs?

"A. No; I am not familiar with the lines.

"Q. Nor can you tell, assuming that the vein descends into the earth westerly, at what, if any, depth it would enter beneath the surface of any of these claims?

"A. No, sir.

Q. Nor can you tell whether or not the coal that you have observed on this outcrop is of a merchantable or marketable character where you observed it?

"A. I could not.

"Q. Nor do you know whether any of the lands which are embraced in this controversy could be worked profitably as a coal mine?

"A. I do not * * * (Trans., p. 157).

"Q. There is some native vegetation on these lands, is there?

"A. Yes, sage brush and the ordinary amount of wild grass that grows in contact with it.

"Q. And it might be productive with water?

"A. It would be excellent land with water.

"Q. Without it, it affords some pasturage and grazing?

"A. Yes, sir."

Robert S. Spence, a lawyer by vocation and a geologist and botanist by avocation, an amusing character as will readily be observable from his testimony, gave the following valuable information (Trans., p. 165):

"Q. You know, don't you, that that ground is not in controversy in this action at all?

"A. I don't know anything about it; I presume not, though, from your statement particularly, but that is what I went up there for, I say; it was for that purpose. I did not say it was to locate this land * * *. (Trans., p. 170).

"Q. So that you don't know and you can't give us any idea as to whether this coal vein, or these veins

as you say, on the east side of the valley would underlie any of these sections out in the middle of the valley?

"A. No, I couldn't with any degree of accuracy. I could figure it out, of course. * * * (Trans., p. 170).

"Q. As far as an examination of the surface of this land is concerned, there is nothing there that would enable you to say that it is coal land within the meaning of your own definition?

"A. No, only from the indications, that is all.

"Q. These indications are this one coal vein away up off to the east that may possibly descend so that it would get under the surface of these lands?

"A. Well, it might fault or do anything; you can't tell.

"Q. That is the point. You can't tell and no one else can tell whether that coal would ever get out there under this land or not?

"A. No, sir, you can't tell.

"Q. The only way would be to sink down on the slope and follow it and see whether it was continuous on its dip, and whether it continued under there in commercial quantities?

"A. Yes, sir.

"Q. That would depend largely, upon the character of the coal, on the vertical distance from the surface and on a great many other factors, would it not?

"A. Yes, sir.

"Q Now, Mr. Spence, if you were endeavoring to get a section of this land out in the middle of the valley there—you are a lawyer and you know the character of proof required upon a coal declaratory statement—could you conscientiously make proof to the United States Government that there was any coal there?

"A. No, sir, I could not do that.

"Q. You could not obtain title?

"A. I could not, unless I went to work and first found the coal; I must first open up the vein before I can file a declaratory statement truthfully."

WILLIAM NEWBROUGH, a civil engineer residing at Evanston, engaged in general practice, a man of intelligence and capable of expressing an opinion entitled to weight, was also called by the Government. In regard to the character of the land he said (Trans., 181):

"A. I know the general line of the Kemmerer-Diamondville-Cumberland vein, and I know the general line of the Adaville vein.

"Q. Exactly. I just want to ask you if you knew of any other coal veins in that country besides the Diamondville-Kemmerer vein, as you might call it, on the east side of the valley and the Adaville veins on the west side of the valley?

"Mr. BURKE: Plaintiff objects, not proper cross-examination.

"A. No, sir.

"Q. And the intervening country that lies in the valley, then, between these two veins, you would designate as ordinary grazing land, would you not?

"Mr. BURKE: Same objection, not proper cross-examination.

"A. Yes, sir * * * (Trans., 181).

"Q. Do you know, as a matter of fact, whether this land in the valley in the immediate vicinity of the ground with reference to which you have been testifying, is used for pasturage purposes?

"Mr. BURKE: Plaintiff objects, not proper cross-examination and immaterial

"A. Yes, sir, it is used that way."

CHARLES GOVE, a witness heretofore referred to in the brief, called by the Government, testified to the character of the land as follows (Trans., 245):

"Q. Going back for a minute, you, as a matter of fact, swore that this land was non-mineral?

"A. Yes.

"Q. And that was your judgment at the time; you were not falsifying yourself, were you?

"A. No, sir.

"Q. You believed it was non-mineral?

"A. I did.

"Q. And that the affidavit was fully justified?

"A. That it was non-mineral?

"Q. That it was non-mineral land, from anything you could see?

"A. Yes, from anything that was visible.

"Q. Now, Mr. Gove, this coal crop that you spoke of, I believe you mentioned one on the easterly and one westerly of this land?

"A. Yes, sir.

"Q. The easterly vein is about a mile and a half?

"A. A few hundred feet over a mile and a half.

"Q. To the cropping?

"A. To the cropping.

"Q. And between this cropping and the east side of that land the land described in section 12, there were no other coal veins, were there?

"A. Not visible.

"Q. And as far as you know there are no other coal veins, if they are not visible?

"A. No.

"Q. You don't know that there were any coal veins in between?

"A. No, sir.

"Q. As far as your observation and knowledge is concerned, there was no other coal veins lying be-

tween this outcrop and the east side of your land, section 12?

"A. Any other coal croppings?

"Q. Yes; there was no other coal croppings.

"A. There was no coal croppings visible?

"Q. Well, that is the only one you know of?

"A. That is the only coal cropping I know of.

"Q. This coal cropping which lies east a mile and a half, or a few hundred feet over, from your land, is the big Kemmerer-Cumberland vein, is it not?

"A. Yes, sir.

"Q. It runs about northeasterly and rather southwesterly through the country there for a great many miles?

"A. Yes, sir.

"Q. Now, going westerly from this vein, there was not any coal cropping on your land, was there, on section 12?

"A. No, sir.

"Q. But as I understand it, when you go west of the west side line of section 12 a considerable distance, perhaps, you find another vein, do you not?

"A. A mile or a little over a mile, just about a mile to the outcropping of another measure of coal.

"Q. And that belongs, does it not, to this Adaville vein?

"A. Yes, sir."

W. H. Brown, practical coal miner, says (Trans., p. 272):

"—. You made the usual homestead affidavit and non-mineral affidavit?

"A. Yes, sir.

"Q. Now, in the non-mineral affidavit you swore that there was no mineral upon the ground as far as you know, none showing there?

"A. I did, and there wasn't any to the best of my knowledge.

"Q. And in the term mineral you included coal, of course?

"A. Yes.

"Q. There was no coal showing upon this section that you filed upon at that time, was there?

"A. No, sir.

"Q. And never has been, to your knowledge, has there?

"A. Not upon the piece that I filed on.

"Q. And absolutely no showing of mineral or coal has been developed there at all?

"A. No, sir.

"Q. You made the usual homestead affidavit, that you were getting this land for your own purposes and in good faith?

"A. Yes, sir.

"Q. And not in the interest of any one else?

"A. Yes, sir."

CHARLES AITKEN says (Trans., p. 289):

"Q. Now, you said on your direct examination that you took it up on the theory that it might be worth something some day?

"A. Yes, sir.

"Q. This ground at that time up there was looked upon as pasturage land, was it not?

"A. Yes, sir.

"Q. The same sort of land that is classified as grazing land throughout the country?

"A. Yes, sir, that is what I took it up for." * * * (Trans., p. 289.)

"Q. You also swore at that time that the land was non-mineral?

"A. Yes, sir.

"Q. And that to the best of your knowledge and information and belief that was also true, was it not?

"A. Yes, sir.

"Q. At that time you knew you were swearing that there was no coal on this land?

"A. Yes, sir; I never seen anything to swear any other way.

"Q. In all the time that you have been over this land and looked at it, have you ever seen any coal on the land?

"A. No, sir, I never did. I haven't been over it for some time.

"Q. According to your best knowledge, information and belief there was no coal on the land at that time; that is true, isn't it?

"A. Yes, sir.

"Q. You don't know yet that there is any coal there, do you?

"A. No, sir, I do not."

JAMES AITKEN testified as follows (Trans., 303):

"Q. How long have you known this land before you filed on it?

"A. Well, I rode over it ever since I was a kid.

"Q. Well, you had known it seven or eight years, anyway at the time you filed on it?

"A. Yes, sir.

"Q. And you went over it immediately before you filed, did you not, looked over the ground?

"A. Yes, sir.

"Q. And you took it up for grazing purposes?

"A. Yes, sir.

"Q. It was good grazing land, was it not?

"A. Yes, sir.

"Q. The same character of land that is used for grazing purposes, generally, over Wyoming?

"A. Yes, sir.

"Q. And if you had water upon it, it would be good agricultural land, tillable land, would it not?

"A. Yes, sir.

"Q. Do you know a ranch on the Big Muddy, a mile or two or three from there?

"A. Yes, sir.

"Q. About the same character of ground as that?

"A. No, sir, it is not.

"Q. What is the difference?

"A. It is all a level country.

"Q. What is?

"A. The ranch on Muddy.

"Q. And this is in a valley, isn't it?

"A. No, sir.

"Q. On the hills?

"A. It is partly on a hill and partly in that little valley.

"Q. Well outside of being level, is it about the same character of land as this Muddy ranch; outside of the conformation, that one is level, you say, and the other isn't?

"A. Yes, sir.

"Q. Outside of that it is about the same kind of land?

"A. Yes, about the same kind of land provided there was water on it.

"Q. Do they raise large crops of hay on this Muddy ranch?

"A. No, sir, they don't raise very good crops on it; they raise crops on it, such as there is.

"Q. It is used for a hay ranch.

"A. Yes, for a hay ranch.

"Q. When you filed here in the Land Office you signed the usual homestead papers, an application and a homestead affidavit and a non-mineral affidavit?

"A. Yes, sir.

"Q. You were able to read at that time?

"A. Yes, sir.

"Q. In your non-mineral affidavit you stated that the land was non-mineral?

"A. Yes, sir.

"Q. That was true, was it not?

"A. Yes, sir.

"Q. No evidence of mineral or coal upon the land?

"A. No, sir, there is no evidence that there is any coal nor mineral of any kind on the land as I could see.

"Q. And there is not today, is there?

"A. No, sir, I couldn't see any on it today.

"Q. How long since you have been over the land or down that way?

"A. I was over it here a couple of weeks ago.

"Q. Is it in the same condition now as it was when you filed on it?

"A. Yes, sir.

"Q. Not an evidence anywhere of coal or any mineral on it?

"A. No, sir."

GEORGE HADDOCK testified as follows (Trans., 326):

"Q. Do you know coal when you see it?

"A. Yes, sir.

"Q. You never saw any on section 12, did you?

"A. No, sir."

LEO J. DROUBAY, page 330, testifies to the general reputation of the valley as being coal lands, but has no specific knowledge of the lands in controversy.

To like effect is the testimony of HEPER O. BALL, page 346, as follows:

"Q. You do not know so that you can swear specifically as to the limits of this coal vein down through that country, do you?

"A. No, sir.

"Q. And you could not tell me under oath whether or not any of the particular land that you have mentioned is actually coal land, outside of the general talk that you heard about that time?

"A. No, sir, I could not.

"Q. This general talk was merely an impression that that was a coal country up through there, was it not?

"A. Yes, sir.

"Q. And it was a coal country along there for a great number of miles, was it not, or supposed to be?

"A. Yes, sir.

"Q. And you don't know anything about the boundaries of it, what this land that was supposed to be coal land actually comprised, do you?

"A. No, sir."

MORGAN GRIFFITHS, page 349, the next witness called by the Government, from the standpoint of competency and practical experience in this particular coal field, probably was the best qualified man who went on the stand. Mr. Griffiths was called as a witness by the Government. The defendant had absolutely no knowledge as to what he intended to testify to, but, knowing the facts, did not hesitate to cross-examine him. The result is an absolute demonstration of the defendant's contention with respect to those lands. We commend particularly to the court's attention the entire evidence of Mr. Griffiths. He shows in the first place the nature and extent of exploitation which has been carried on along the outcrop of this vein, and shows that, while the coal measures can readily be traced, intervals as high as thirty miles along the outcrop exist upon which no coal mine can be opened because of the thinness and lack of commercial value of coal. He gives many striking illustrations of thinness, wanting and squeezing of the coal

measures in the particular vicinity into which we are inquiring, and tells of the mines open at the surface upon promising portions of the outcrop, want as they descend into the earth, leaving an absolutely barren stone wall in place of the coal. He shows that between two of the Union Pacific coal mines immediately adjacent to the land, the shafts of which were situated about eleven thousand feet apart, over six thousand feet of the 11,000 had been determined by subsurface exploration to be absolutely barren of coal, absolutely demonstrating the position taken by the defendant in the case that no human being can say from the mere presence of an outcrop at the surface that lands lying as far to the west as two miles in some cases, are coal lands.

While commending the entire testimony of Mr. Griffiths to the attention of the court, we invite the court's attention particularly to the following (page 356):

> "Q. Whereabout in this vicinity do you know of this vein pretty well, that is, the outcrop of the vein; between what points?
>
> "A. I know from section 17 south.
>
> "Q. That is in township 19 north, range 116 west?
>
> "A. Yes, sir.
>
> "Q. You don't know from section 17 north, do you?
>
> "A. Well, I have been in a couple of prospects there, one just north of 17, and another one at a gap there. I didn't know just what they call that gap. * * *
>
> "Q. Where you struck or opened up your vein at No. 1 mine, did you have a good outcrop?
>
> "A. A good outcrop.
>
> "Q. In fact, it was a very good outcrop, was it not?
>
> "A. Yes, sir.
>
> "Q. And so far as ordinary indications are concerned, it looked as though you might profitably work

a great extent of territory lying west of the outcrop at that point, did it not?

"A. Yes, sir.

"Q. Now, as a matter of fact did you encounter any difficulty in No. 1 mine with reference to your coal continuing down from the outcrop where you had opened it, your entries?

"A. Yes, sir.

"Q. As a matter of fact, in running north from the slope of No. 1 mine, you encountered a fault of some kind, did you not?

"A. We ran up against a rock wall there.

"Q. Whereabouts did you run up against a rock wall in No. 1 mine?

"A. I believe it was in the fifth north entry.

"Q. Were you still in within the section lines of 31, the vertical lines?

"A. Yes, sir.

"Q. So that here in this very country, and on this very vein, we have a specific instance of where you started to develop a coal mine and strike a vein indicating a very large and profitable coal bed, and before you get outside of the boundaries of one section you went up against a rock wall?

"Mr. BURKE: Is this a speech or is it a question?

"Mr. KELLEY: It is a question which will answer, perhaps, the purposes of a speech hereafter.

"Q. Is that true?

"A. That is true.

"Q. All of it is true, is it not?

"A. Yes, sir.

"Q. Have you tried to go through that stone wall?

"A. No.

"Q. Why?

"A. We put down a drill then and couldn't get anything.

"Q. Where did you put down the drill?

"A. From the northwest corner there.

"Q. On the northwest corner of 31?

"A. Yes, sir, somewhere in that vicinity.

"Q. Could you indicate on this map by making a mark about the position of that drill hole, if you please?

"A. Well, no, I could not be positive, but I know it is somewhere there.

"Q. Well, approximately, you know.

"A. I think it is somewhere down in there, about that corner.

"Q. About the center of the northwest corner?

"A. I did not have anything to do with locating that drill; the superintendent located.

"Q. It was somewhere in the northwest corner of 31?

"A. Yes, somewhere in there.

"Q. So that you do know positively that there is no coal under the northwest quarter of 31 where this hole went down?

"A. Yes, sir.

"Q. Now, then, Mr. Griffiths, what is a want, as used in coal mining parlance?

"A. Well, where the seam is absent.

"Q. Now, then, do you in mining coal frequently strike on slopes what is known as a want?

"A. No, sir. That is the first want I have seen in this field.

"Q. I say as a general coal mining proposition, that is a recognized condition, is it not?

"A. No, not a want. We run up against faults that will throw the coal either up or down, but a want, that is the first want I have seen in this country.

"Q. I know, but I am not asking you about this country; I was asking as a general proposition if you

do find what are known as wants in coal mining, or if it is found in the business of coal mining, not in your experience, but do you know that as a fact?

"A. My only experience is in this case here, or anywhere here in Wyoming.

"Q. Did you ever hear of a want before you struck this?

"A. Oh, yes; we find them in Montana, but not very frequent.

"Q. Did you ever hear of a want yourself, not see it, but did you ever hear of such a thing as a want before you saw this one?

"A. Not in this field?

"Q. Let's start over again. I am not speaking about this field now; I am asking you as a coal miner. Do you understand?

"A. Yes, sir.

"Q. If you had ever heard tell of a want?

"A. Yes, sir.

"Q. Certainly. You did hear of it. Then, it sometimes occurs in the history of coal mining, doesn't it?

"A. Oh, yes.

"Q. Is there any way you or any one else, as far as you know, can determine before you explore down the slope, whether you are going to run into a want or not?

"A. No, sir.

"Q. So that wherever you have an outcrop running through a country like this, a possibility is that in going down on the slope you will encounter a want; that is a possibility, isn't it?

"A. Yes, sir.

"Q. And it was a demonstration here in this particular place?

"A. Yes, sir.

"Q. Now, then, when I spoke of wants I meant a

total disappearance of the seam; did you mean the same?

"A. Yes, sir.

"Q. Now, what is a squeeze?

"A. A squeeze is caused by taking out too much coal, and not leaving enough pillars.

"Q. I mean a squeeze in the vein itself; have you ever heard of that term?

"A. No.

"Q. It is one that you are not familiar with?

"A. It is what they call thinning.

"Q. Have you ever heard of thinning then, using that term?

"A. Yes, sir.

"Q. They are much more frequent than wants, are they not?

"A. Well, they are in all the fields here.

"Q. You mean this coal field?

"A. Yes, and Rock Springs.

"Q. Tell us, if you please, between what variation do these thinnings run?

"A. Well, the seam becomes thinned out until it thins out altogether and there is not anything left.

"Q. Has it frequently been your experience in this particular section that you do find places where the veins are thinning?

"A. Yes, sir.

"Q. And some places where they are broken up and intermingled with dirt?

"A. Yes, sir.

"Q. So that commercial coal mining cannot be profitably carried on?

"A. That is correct.

"Q. What have you to say as to whether or not that occurs on this particular coal vein?

"A. I cannot say; I don't know.

"Q. Haven't you had any of them in your Cumberland mine?

"A. Yes, sir.

"Q. Well, have you seen it there?

"A. Yes, sir.

"Q. Well, what did you mean by saying that you never saw them?

"A. Well, now, you are going north of that line.

"Q. Well, you don't know what is north down under ground in all places, do you?

"A. No, sir.

"Q. I am asking you, now what you know about this particular vein where you have been working, where your knowledge extends.

"A. Yes. In No. 1 Cumberland, going south, the coal thins there down to four and five feet, and also gets dirt partings in it.

"Q. What do you mean by a parting?

"A. A parting of slate or shale rock.

"Q. What is the result when you run into it, Mr. Griffiths?

"A. There is no mining; it is not profitable to work those places.

"Q. Would you say that land that had coal underlying it where the surface was over these partings or thinnings such as you describe, would that land be very valuable for coal land?

"A. No, sir.

"Q. Is there any way in these sections that we are talking about, that you can fix any value upon this land for coal mining purposes on the surface of it, I mean, removed from the outcrop, prior to the time that you actually open it up or develop it?

"A. Not unless you use a drill.

"Q. Well, that is, of course, determined by drilling down and you find coal or the absence of it?

"A. Yes, sir.

"Q. What else have you encountered beside thinnings and partings and wants in the No. 1 mine?

"A. Well, I can't think of anything else.

"Q. That is about all that one coal mine could strike, isn't it?

"A. I think so.

"Q. Now, going up to No. 2, where is that mine located, Mr. Griffiths?

"A. On section 19, I think somewhere near the east line.

"Q. The east line of 19?

"A. About the center, yes, sir.

"Q. When was this mine opened up?

"A. About the same time as No. 1.

"Q. And you went down on a good coal crop, did you not?

"A. Yes, sir.

"Q. You had every reasonable expectation to believe that you were going to have a large and profitable coal field to be developed from that mine?

"A. Yes, sir; we have some good coal in that mine today.

"Q. Have you had any trouble there?

"A. Yes, sir.

"Q. What was the nature of that trouble?

"A. Oh, we ran up against this same want.

"Q. In what direction did you run up against this same want?

"A. In the south entrance; it was struck first, I think, in the third south, about ten rooms, I believe, from the slope.

"Q. How far would that be; how far are your rooms apart; how far in feet?

"A. Fifty feet.

"Q. That would be about five hundred feet, then, would it, from the slope?

"A. Well, with the pillars, of course, in the slope, it would be about six hundred feet.

"Q. Upon what subdivision of section 19, Mr. Griffiths, is your shaft or slope, do you know?

"A. It is right on that black spot there, I should think.

"Q. Then it is in the northwest quarter of the southeast quarter of 19, isn't it?

"A. It is here.

"Q. The slope has a descent——

"A. It runs north, a little, of the west line.

"Q. It runs a little north of west?

"A. A little north of west.

"Q. Well, how far is it from No. 1 shaft to No. 2 shaft along the strikes of the vein?

"A. About two miles.

"Q. Now, about how far north of No. 1 shaft did you drive your entries until you came to this want?

"A. I think No. 5 was nearly about the section line of 31; that is No. 5 north. Say nearly to the section line, when we struck that fault.

"Q. About how far in feet would that be, do you remember?

"A. Oh, say twenty-five hundred feet.

"Q. Was it as much as that?

"A. Yes, the slope, you see, is about in the center of the section.

"Q. Now, do you believe that that is the same want that you struck in both of these mines, Mr. Griffiths?

"A. Well, I am of the opinion that it is.

"Q. Now, these two shafts are about two miles apart; that would be something over ten thousand, four hundred feet, on the basis of fifty-two hundred and eighty feet to the mile, I believe. You have actually mined from these two shafts, northerly about twenty-five hundred and southerly about five hun-

dred feet, until you encountered the want, is that true?

"A. Well, say a thousand feet.

"Q. That would leave a want in there of something over six thousand feet, would it not?

"A. Yes, sir.

"Q. So that out of the two miles along this outcrop, actual development has shown barrenness in over six thousand feet, or seven thousand feet in the underground development?

"A. Yes, sir.

"Q. Now, you first struck this want on what level of No. 1?

"A. I think it was the fifth north.

"Q. Did you encounter it on any of the lower levels?

"A. Yes, sir.

"Q. As a matter of fact, you have encountered it on all the levels below that, have you not?

"A. Yes, all the levels going north.

"Q. Now, in which direction does this want apparently descend into the earth; do you strike it more northerly or more southerly on the workings as they succeed in depth?

"A. We struck it on the slope just below the 12.

"Q. The slope itself runs down into this want on the 12th level.

"A. Yes, sir.

"Q. So that the want is traveling in a southwesterly direction?

"A. Yes, sir.

"Q. The want was first encountered at No. 2 mine on what level?

"A. On the 3rd south.

"Q. Have you developed that want in the lower levels?

"A. Yes, sir.

"Q. What levels?

"A. I think we ran up against it on the 4th, 5th, 6th, 7th and I think the 8th.

"Q. Now, as you encountered it in the workings from the slopes of 2, what is the direction of it; is it northwesterly or southwesterly?

"A. It keeps about parallel with the slope down to about the 9th, I think, and then runs south.

"Q. So that the slope is a little west of north as I understand it; it is west of north as it goes down?

"A. North of west.

"Q. It is north of west, yes; so that this want as you have developed it from your levels from No. 1 and No. 2, is descending along diverging lines, the most northerly one running northwesterly and the most southerly one running southwesterly?

"A. In No. 2 it seems to have made a turn south.

"Q. At what level?

"A. I think it is at the 8th level. It runs pretty near parrallel with the slopes for the first four or five drifts there.

"Q. Now let me ask you this question. Can you tell us how far you have developed the extremities of that want at the furthest distance; how far is the furthest distance from your No. 2 mine where you encountered it running south to your No. 1 mine, where you encountered it running north, what is the greatest width of that want as you have actually developed it?

"A. Oh, I should say six thousand feet.

"Q. Well, it was six thousand feet at the point where you first developed it, wasn't it?

"A. Well, I am speaking about that turn now.

"Q. Well, I say at the furtherest point?

"A. About the center of 31. You see the slope was down in there about the center.

"Q. How far would that be, a thousand or fifteen hundred feet further than where you first developed it?

"A. About five hundred feet.

"Q. Now, then, I believe you said you don't know whether there are any other wants along this same vein between Kemmerer——

"A. No, I don't.

"Q. Don't you know, as a matter of fact, that every coal mine that has been opened on this vein, the workings have been pinched out by wants?

"A. No, I can't say that I do know that, for in No. 2 mine we have good coal there. It is not pinching out in No. 2 mine or thinning out.

"Q. No. 2 is the one you are talking about?

"A. Yes, sir.

"Q. That pinches out going south? Well, your slopes run up to this want in No. 2?

"A. Yes, but the seam itself does not thin or pinch out.

"Q. I am not talking now about the seam; I am talking about coal. The coal is gone as far as any commercial value is concerned?

"A. Gone where that want is, yes, sir.

"Q. Now, have you had any thinnings in No. 2?

"A. No, sir.

"Q. You don't know about No. 4 and No. 2 and No. 1 Diamondville and those other mines up north there particularly, do you?

"A. No; I never was in No. 2 mine.

"Q. Have you had any experience with the purchase of coal lands for the Union Pacific?

"A. No, sir.

"Q. Does that come in your department?

"A. No, sir.

"Q. I want to ask you about section 30 on this

map, that lies between 19 and 31, between No. 1 and No. 2 mines.

"A. Yes, sir.

"Q. Do you know who owns that section?

"A. The Kemmerer Coal Company, I believe.

"Q. That is the one Mr. Quailey is connected with?

"A. Yes, sir.

"Q. I will ask you if it is not a fact that at one time the Union Pacific Company offered Mr. Quailey a hundred thousand dollars for that section?

"A. I don't know.

"Q. As far as section 30 is concerned at the present time, for coal mining purposes it is worth nothing, is it?

"A. I don't think a man would give five cents for it now.

"Q. That is not because the coal has all been taken out of it, is it?

"A. No, sir.

"Q. It is because the value never was in the coal under there probably, because there is no coal there to mine; that is the reason, isn't it?

"A. Well, it is because of what we developed in No. 1 and No. 2 mines.

"Q. From that you don't believe that it is valuable for coal mining purposes?

"A. That would not say that there is not coal there. It is possible the coal may be found there.

"Q. Well, from all of your developments now, instead of increasing the value of this section, it has, as a matter of fact, decreased it, hasn't it, very materially?

"A. Well, out on the north of that section. South of that I wouldn't give anything for that section myself.

"Q. And yet this coal vein on the crop runs directly through the section?

"A. No, sir.

"Q. Doesn't it?

"A. No.

"Q. Isn't this coal vein crop put on here right?

"A. No, not down in section 20.

"Q. Where is the coal vein down there?

"A. There is on the north quarter and on the south quarter——

"Q. Where do you think that the coal outcrop should be shown?

"A. (Indicating.) Just as it enters the section on the south.

"Q. Do you mean to tell us that you cannot drive over the country and follow this outcrop at all places, Mr. Griffiths; that there are spots where you cannot see it at all?

"A. There is spots there where it is covered up, yes, sir.

"Q. This outcrop as indicated on this map has an approximate width of about one hundred feet all along where it runs. Is that correct; it is one hundred feet thick?

"A. The outcrop?

"Q. Yes.

"A. The seam itself?

"Q. Yes.

"A. I don't think the seam is a hundred feet thick.

"Q. And you don't know any place where this would be a correct representation of it on the Government's map, assuming that it runs from seventy-five to a hundred feet thick, as shown here?

"A. Does that map show that?

"Q. Well, I am assuming it.

"A. I don't know of any place where it is over twenty feet.

"Q. Now, it is true with reference to this outcrop wherever you are familiar with it, that it is broken

in spots; in spots you can see it and in spots you cannot?

"A. Yes, sir.

"Q. And that is at infrequent and irregular intervals, is it not?

"A. It is covered over with wash.

"Q. There is half a mile of that sort of covering right on section 30, as I understand it, or more?

"A. Yes, sir.

"Q. Now, then, let us go north to No. 3 mine. Did I understand you to say in answer to Mr. Burke's question that you had some thinning out of the coal there?

"A. On the north half of the section, yes, sir.

"Q. On the north half of the section the coal is thinning out, is it?

"A. Yes, sir.

"Q. Of course, you don't know whether it has now thinned out completely or not, do you?

"A. I do not, no, sir.

"Q. You would not undertake to tell me, as a coal miner of some forty years' experience, whether you will have any coal when you go down on that slope a couple of hundred feet or five hundred feet farther, will you?

"A. Not positively.

"Q. You could express an opinion about it and that is all?

"A. That is all.

"Q. You could not take an oath that there is coal under there, could you.

"A. Not unless I could see it.

"Q. Suppose that, in order to classify section 24 and section 12 on these maps—suppose that in order to classify section 18 in township 20 north, range 116 west, the westerly portions of sections 20, 30, 6 and

12 over here and the portions colored red in 18, which are removed quite a distance from the crop—suppose in order to classify that ground you have to make a solemn oath that of your own positive knowledge there was coal under that surface and at the time you were required to take an oath there was actually no development which showed any coal under that surface, and there was no development to speak of at all on the vein east of that ground, could you take such an oath, that there was coal under that ground?

"A. No, sir, I could not.

"Q. You would even hesitate to venture the merest kind of a professional opinion that there was coal under, wouldn't you, in the absence of development which showed it?

"A. Yes, sir; that is, from the outcrop and the way the coal was dipping, I would suppose that there would be coal under that land.

"Q. That there might be coal under that land?

"A. Yes, but to swear that there was coal there, I couldn't do it.

"Q. You are not employed by the Government?

"A. I think not.

"Q. Now, when you hazard an opinion, as it is suggested that might, from the dip and the outcrop, that there might be coal under there, that would be the limit of your opinion, wouldn't it?

"A. Yes, that would be the limit.

"Q. Would you under any circumstances in the absence of development, and merely from the outcrop as indicated upon that map, hazard an opinion that there would be any workable or commercial valuable coal under land lying away west of the outcrop?

"A. Not without first prospecting or drilling.

"Q. Therefore you could not say under any circumstances that the land lying off west from this out-

crop, in the absence of any development or knowledge concerning the matter, would be more valuable on the possibility of there being some coal under it, could you?

"A. There would be a possibility, of course, of coal being there. If it showed on the outcrop, dipping in that direction under that land.

"Q. In the first place, when you go down there, there may be no coal there?

"A. There may be no coal there, yes, sir.

"Q. In the second place, if there is any coal there, it may be too thin to work?

"A. Yes, it might be all split up or broken up.

"Q. In the first place, there might be no coal, and second, if there was coal, it might not be any good?

"A. Yes, sir."

The foregoing concluded the entire showing made on behalf of the complainant with reference to the known character of the lands in controversy, with the single exception of the evidence of the witness Veatch. (See Trans., p. 378.)

We will not attempt, because of its length and plain immateriality being based upon evidence based upon new conditions developed long after the entries in question, to here set out the testimony of Mr. Veatch.

Mr. Veatch's opinion was based upon the observations he claimed to have made of the developments upon the outcrop of the coal horizon opposite the lands in question, none of which development was made until after practically all the entries in question had been completed; upon developments subsequent to such entries in the Cumberland and Diamondville No. 4 mines near the litigated lands; upon the records of certain Diamond drilling done subsequent to said entries, and upon other conditions and evidence which did not exist at the times of said entries, and

as Mr. Veatch did not even suggest that he or any one else, upon the conditions as they existed at the times of the various entries, could venture an opinion that any of the lands had any value for the coal that might exist therein, his evidence and opinions were and are clearly immaterial under the decisions of this court and should be disregarded.

Giving to the evidence of Mr. Veatch all of the dignity and credibility that could be accorded to the fairest evidence, it after all amounts to merely an expression of opinion, indulged in by Mr. Veatch alone, that because of the outcrop lying easterly of the ground in controversy coal measures may descend beneath the land in controversy and exist at some conjectural depth thereunder.

Under the authorities heretofore cited in the brief, we submit that, even though this be accepted, it would be insufficient to constitute the land as known coal land within the meaning of the term as used herein. Mr. Veatch frankly admitted that, even upon the evidence available in 1905, the time of his observations, he could not make the proof required by the Land Office to enter the lands in controversy as coal lands.

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE DIAMOND COAL AND COKE COMPANY, APPELLANT,
v.
THE UNITED STATES.
No. 192.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

No better statement of the facts here involved can be made than that contained in the opinion of the Circuit Court of Appeals (R. 1078; 191 Fed. 786). It might well be adopted without addition as the basis for argument except that it does not refer the court to the pages in the record at which the testimony is to be found.

To the bill charging fraudulent acquisition of these lands by the defendant company the answer tenders two issues: First, the absence of fraudulent intent on the part of the defendant company and its assignors;

second, the nonmineral or noncoal character of the lands in question. This latter proposition, in turn, depends, first, upon the evidence as to the physical character of the lands, and, second, upon the true construction of the governing statutes.

Facts as to the appellant's fraudulent intent.

As to the intent of the appellant we are not left in any doubt. The bill alleges and the answer admits the manner in which these lands were acquired and the uncontroverted testimony supports the recitals of the court below on this subject.

It appears—

That prior to the year 1898 the defendant company was operating coal mines (although not upon the land in dispute) on this Oyster Ridge seam of coal, which is supposed to underlie the lands in controversy; and that Thomas Sneddon was its employe.

That in March, 1898, Sneddon caused a survey of a portion of the lands in dispute to be made (R. 176, 179), found coal on an adjoining parcel, and declared that "northwest here we have got coal for years" (R. 225, 230); told the witness Gove that he would put homestead entries on those lands to prevent the Cumberland people from getting them (R. 230, 231), and at about the same time declared to the witness Nesbit that he believed there was coal underlying these lands and that he intended to take them up by homestead entries (R. 146, 148).

That on March 28, 1898, he filed a coal declaratory statement covering one of the tracts in question, in which he took oath that he came into possession of the said tract on October 1, 1897, and had opened a valuable vein of coal thereon; that he was well acquainted with the character of said land; that it did contain large deposits of coal and was chiefly valuable therefor (Complainant's Exhibit, No. 268, R. 981–982); that at Sneddon's invitation and with the active cooperation of Burrell, the defendant company's manager, a number of persons, chiefly, if not entirely, employees of the defendant company, were persuaded to make homestead entries on these lands, falsely swearing that the entries were made for the purpose of actual settlement and with intent to cultivate the land (R. 231, 251–253, 262–267, 276–283, 291–301, 315–320); that on these parcels frame cabins were built and that the defendant company defrayed the cost of making these entries and building these cabins, and, finally, made payment of certain sums to each of these dummy entrymen when at the request of the company they had surrendered their entries, and also remunerated Burrell, its manager, for his services and outlay in this connection (R. 234–235, 263–266, 285–299, 318, 773–774).

That in 1899 this scheme of entry by dummy homesteaders was abandoned in favor of the use of soldiers' additional homestead scrip, which was purchased by Mr. Donahoe, who, with others, had acquired a controlling interest in the company (R. 773), or by the company itself (R. 187); that Sneddon

and Harrison paid nothing themselves for the scrip which they used, and that Sneddon for his efforts in the matter was paid $1,000; that Sneddon was superintendent of the defendant company throughout this litigation, was present during the taking of much of the testimony, and was not called to explain or deny any part of the fraud in which he had participated.

Evidence as to the character of the lands.

Again, concerning the character of the lands, there is little conflict as to fact, although we encounter the usual inability of expert witnesses to agree in their conclusions. This is strikingly exemplified by the conflicting views of Mr. Veatch, who examined the lands for governmental purposes at a time when no suit was contemplated, and those of Messrs. Forrester, Hopkins, and Talmage, who were employed by the defendant to examine the lands with a view to testifying in this cause.

That the lands in question are rough, broken, and mountainous country, unfenced, unfarmed, and of a character known as "sagebrush alkali" land; that the soil is classed in the field notes of the public survey conducted by the United States Surveyor General for Wyoming as "third rate" or "poor" (Complainant's Exhibits, Nos. 1 to 4, R. 42, 790–846); that even if it were possible to raise crops on it by irrigation the cost of such an undertaking would be practically prohibitive (R. 142–143, 393–394, 439); that the value for agricultural purposes was esti-

mated by the witnesses for the Government at from 50 cents to $1.25 an acre (R. 127, 151–153, 159–161), and from $1 to $2.50 by witnesses for the defense (R. 640); that notwithstanding this fact the defendant company paid for the scrip with which the lands were purchased from $6 to $13 an acre (R. 187), and, in addition, the Government price of $2.50 an acre (R. 855), and to Sneddon, $1,000 for his services in the matter (R. 774); that all the tracts in question lie west of the known line of coal outcrop, at distances varying from a few hundred feet to a mile and a half, are over the veins on their westward dip, and follow the direction of the outcrop north and south for a distance of nearly 7 miles; that the coal-bearing horizon does undoubtedly extend under these lands (R. 666); that they were generally reputed to be and were regarded as coal lands and many cash coal entries were made on neighboring parcels (R. 124, 319, 330, 337, 341–342); that the defendant company paid to one Lees on August 26, 1899, $3,400 for an undeveloped quarter section which Lees had acquired by cash coal entry for $3,200, in close proximity to two of the tracts now in dispute (R. 184–186); that the region had proven to be highly productive of coal, and from mines opened along the line of this same outcrop large quantities of coal had been and were being taken (Complainant's Exhibits, Nos. 280 and 312, R. 999, 1039, R. 351–352, 1021–1030); that the defendant company in mapping its mines had projected its prospective

workings into the land in controversy (Complainant's Exhibit No. 309, R. 1034, 381–384), and had caused part of the lands in controversy after their acquisition to be listed as "land exempt under the mining law" of the State of Wyoming, which law exempted from local taxation all lands adjacent to any operating mine which could by any possibility be worked from that mine (R. 1000–1021; Laws of Wyoming, 1903, ch. 81); and that workings of the Union Pacific mine immediately adjoining section 18, T. 19 N., R. 116 W. (one of the tracts in dispute) stopped at the section line of that tract in 10 or 15 feet of workable coal (R. 351–352)—all these things are undisputed.

On the other hand, it is quite true that the coal, if any, underlying the precise lands in question has never been actually opened or worked; that there are no surface indications of coal on these particular tracts, the nearest such indication being the outcrop lying to the east, which has already been alluded to; that the coal field belongs to the Cretaceous and not the Carboniferous era, and that seams of coal are less regular and persistent in the former formation than in the latter; that miners have found in this particular vein from time to time impurities in the coal itself, a thinning of the vein, and at times what are known as "wants" when the vein entirely disappears; that the presence or absence of these impurities, "thinnings" and "wants," can not be positively determined in advance of actual operation; and that such coal as may under-

lie the lands in question is doubtless subject to the same uncertainties which attend that part of the vein already explored and similar coal deposits throughout the west. It is also true that the dip or slope of that portion of the vein already explored would indicate that at the western edge of the lands in controversy the vein may sink too low to be profitably mined at this time.

Upon these facts the District Court found itself not satisfied as to the coal character of the lands, but the Circuit Court of Appeals had no difficulty in reaching the conclusion that the lands are "vacant coal lands of the United States" within the letter and spirit of the law.

BRIEF OF ARGUMENT.

I. The patents in suit are voidable because the lands were not of a character subject to entry under the homestead law.

1. The facts show with reasonable certainty that the lands were chiefly valuable for their coal deposits.

2. The lands are therefore within the general reservation of "lands valuable for minerals," declared by Revised Statutes, section 2318, and within the special declaration of the homestead law, "nor shall any mineral lands be liable to entry under its provisions," Revised Statutes, section 2302.

II. The patents are voidable even though it be conceded that upon the showing made in the record the mineral value of the lands has not been proven.

1. It is the province of the Land Department, under the homestead law, to inquire into and determine the character of the land before entries are allowed or patents issued, and the purpose of the statutory affidavits is to assist it in that inquiry.

2. The affidavits upon which the department relied and acted contained material, false and perjured statements, which induced the department to forego the further inquiry which presumably it would have made if the truth had been revealed.

3. This fraud is such that it vitiates the patents and renders them voidable.

4. Under these circumstances the burden of proof shifts from the Government, which is no longer obliged to establish the mineral character of the lands.

5. The appellant company is not an innocent purchaser.

ARGUMENT.

I.

The patents in suit are voidable because the lands were not of a character subject to entry under the homestead law.

It is clear that if the lands in controversy were "lands valuable for minerals" within the general reservation of R. S., section 2318, or "mineral lands" within the special declaration of the homestead law, R. S., section 2302, or "vacant coal lands" within the meaning of R. S., section 2347, they could not lawfully be acquired by soldiers' additional home-

stead scrip entries. The discussion may therefore be directed to their character and classification.

1. *The facts show with reasonable certainty that the lands were chiefly valuable for their coal deposits.*

We need not discuss at length the evidence on which this assertion is based. The proximity of the land to the line of outcrop along which numerous mines and prospect holes were opened, practically all of them showing the presence of coal; the development of defendant's principal mine on land not far distant from the most northern section in this suit, and of another of its mines on a section immediately adjoining and in front of one of those here in question; the working of the Union Pacific mine in good coal up to the very line of the southernmost section involved; the westward dip of the vein at an angle of from 15° to 22°; the opinions of all disinterested witnesses, and even the statements of some of appellant's paid experts, guarded though they be—all of these circumstances lead to the conclusion that coal in commercial quantities underlies practically all of these lands. The evidence upon this point is as convincing as the circumstances could well admit.

There may be, perhaps, room for doubt as to the present value for mining purposes of a portion of this coal farthest removed from the line of outcrop. Possibly the depth of the coal in the extreme western portions of these lands is such as to render its extraction unprofitable to-day in competition with

coal more easily reached; but it by no means follows that even those portions are not principally valuable for their coal or that the exhaustion of more desirable deposits and improved methods of mining will not make it possible in the near future to mine even this coal at a profit. Of course, this is sufficient to give them a present value as coal lands. Men do not buy land, mineral or otherwise, merely with a view to its present use. Particularly is this true in an industry like coal mining, where the earth's known supply is limited and the demand therefor is increasing. The owner of a large coal vein need have little fear that he will not ultimately find a market even for that portion which lies at a depth of 3,000 feet. Nor does the thinness of the vein at points on the outcrop, nor the occurrence of occasional "wants" or other flaws therein have any tendency to weaken this conclusion. Mining is notoriously a business of hazard. Indeed, it is conceded by one of defendant's witnesses, and is a matter of common knowledge, that this uncertainty obtains to a much greater extent in other kinds of mining than in the extraction of coal. If miners were accustomed to require an assurance of large profits from all of their operations and an exact ascertainment in advance of the extent of their holdings, there would be an end to investment in all mining land.

The value of that portion of section 18, T. 19 N., R. 116 W., adjoining the Union Pacific mine, is denied by appellant on the ground that the two parcels are too

small to be profitably mined without ownership of the outcrop, and it is suggested as to the remaining tracts that ownership of the outcrop at points adjacent to or in front of them is essential to their profitable working. It can not be that the character of the land as mineral or nonmineral is to be determined either by the number of acres involved or by the possession of the means of access. If the former were true, we would be compelled to shut our eyes to the fact that the Union Pacific Company had actually worked a vein of coal 10 or 15 feet in thickness up to the border of the tract in question, and that the usual royalty paid in that region upon the removal of coal was five cents per ton (R. 683–684); and if the latter were the test, the coal character of the remaining land would vanish as soon as sections of the outcrop had passed to private ownership.

That these lands were chiefly valuable for their coal deposits is further shown by considering the above facts and the price which the appellant was willing to and did pay for them, in contrast with their worthlessness for agricultural purposes. The evidence on this point is clear.

Appellant's statement that they were returned by the surveyor general of Wyoming as agricultural lands is contrary to the fact. Other adjoining sections in the township where these lands were located, as well as one of the very sections in controversy, S. 20, T. 20 N., R. 116 W., were designated and returned as coal lands (R. 825–844). This, of course,

does not mean that the remaining sections were regarded as agricultural. On the contrary, they were described as follows:

> Township 19 North, Range 116 West.
>
> GENERAL DESCRIPTION.
>
> The land in this Tp. is of very poor quality below the common average.
>
> * * * * *
>
> There is very little good grazing land in the Tp., it being generally covered with sage brush. (R. 825.)
>
> Township 20 North, Range 116 West.
>
> * * * * *
>
> GENERAL DESCRIPTION.
>
> The land in this Tp. is of a very poor quality, except in the valley of Ham's Fork where it is first-rate.
>
> Ham's Fork runs through sec. 2 and bet. secs. 3 and 10, through the NE. ¼ of sec. 9 and through sec. 4; * * * there is some very fine hay land in secs. 1, 2, 3, 4 and 10 along creek bottom. The balance of the bottom land is covered with willow brush.
>
> The grazing on the uplands is very poor, it being in most places covered with sage brush. (R. 843–844.)

These returns, made in 1874, long before any exploration took place along the line of outcrop, are of little value as determining the coal or noncoal character of any particular portions of the region.

They are far more significant of the uselessness of the lands in dispute for purposes of grazing or cultivation.

The appellant contends, however, that all evidence as to the present condition of these lands is irrelevant since under the authorities the lands must be classed as mineral or nonmineral, according to the knowledge of them which existed at the time of the entries in question.

We may concede that if the lands had been taken in good faith for agricultural purposes in the absence of any indications to the contrary, the subsequent discovery of minerals would not invalidate a title thus honestly acquired; but proof of subsequent developments is certainly relevant to corroborate testimony as to mineral indications known and recognized at the time of entry.

Moreover, while much of the special information relied upon by the expert witnesses may not have been accessible when the entries were made, it should be remembered that most of the data on which was founded an opinion favorable to the coal-bearing character of the land were matters of common observation from the beginning. The existence and extent of the vein upon its outcrop, its dip towards the land in question, the common reputation as coal-bearing land—all these things were patent at the time of entry. As to the appellant, it was fortified by its operation of mines upon this vein as early as the year 1894 and the survey and exploration made by Snedden, its employe. All signs pointed to the presence of coal in commercial quantities

under the lands in suit, and pointed with a sufficient degree of probability to render their purchase no wild-cat scheme but a prudent mining investment, of especial value to the appellant. Undoubtedly it had cause to believe, and did believe, that the lands in question were coal bearing.

The matter was well summarized thus by the Circuit Court of Appeals:

> We have here an extensive coal deposit of commercial value; the outcrop line, though barren in places, being easily traced or discoverable. The dip of the coal veins was known. Surrounding geological formations showed that, though subject to "wants" and irregularities, they extended under the lands in question. The lands were of little agricultural value, but they had a much greater value because of the belief in their coal contents founded on evidences upon which men in the business were accustomed to rely. (R. 1083, 1084; 191 Fed. 796.)

2. *The lands are therefore within the general reservation of "lands valuable for minerals," declared by Revised Statutes, section 2318, and within the special declaration of the homestead law, "nor shall any mineral lands be liable to entry under its provisions,"* Revised Statutes, section 2302.

The coal-land law itself makes a distinction between "vacant coal lands of the United States" (R. S. 2347) and public coal lands upon which "mines" have been "opened and improved" (R. S. 2348). Both kinds are subject to entry and purchase under that law.

In this case, however, we are concerned with the character of lands which may lawfully be entered under the homestead law. It may be true that, if the lands be excepted from that law by virtue of their coal content, they must, *e converso*, be subject to entry and purchase under the coal-land law. But this proposition need not be considered, since, if the lands in question were not open to entry under the homestead law, it is a matter of little consequence that they might have been entered under some other statute.

The policy of Congress to withhold lands valuable for minerals from acquisition under any law not expressly made applicable to such lands has been too often recognized by this court to admit of discussion here. This policy, and the general statutes declaring it, apply to coal as well as all other minerals. *Mullan* v. *United States*, 118 U. S. 271, 276. Section 2318 of the Revised Statutes, which is contained in the chapter providing for the disposition of coal as well as other mineral lands, declares:

> In *all cases* lands *valuable* for minerals shall be reserved from sale, except as otherwise expressly directed by law.

As the purpose of this and similar provisions was to reserve the minerals in the land, it seems too plain for argument that the purpose of Congress would be practically defeated if the language used, viz, "*lands valuable* for minerals" were confined by a narrow and gratuitous interpretation so as to signify merely lands upon which minerals have been actually

exposed to the eye and developed. The language indeed is so plain as hardly to admit of any interpretation except in respect of the measure—not the means of ascertaining the measure—of the mineral value.

An equally broad exclusion is found in the homestead law itself, viz, "Nor shall *any* mineral lands be liable to entry and settlement under its provisions." (R. S. § 2302.) It is true that the homestead law, as first enacted May 20, 1862, 12 Stat. 392, provided for the exclusion of mineral lands in terms, susceptible at least, of a much narrower construction. The lands to be entered were such only as might be entered under the preemption law (R. S. § 2289), which excluded, not "mineral lands," or "lands valuable for mineral," but only those "on which are situated any *known salines or mines.*" (R. S. §§ 2257, 2258.) The more general exclusion of all "mineral lands" was added to the homestead law years after its enactment. The addition of the broader provision indicates an intention to broaden the terms of exclusion and thereby add to, and not merely reiterate, what was already in the statute on the subject.

These considerations should be borne in mind in reading certain opinions of this court, upon which the appellant greatly relies, and which will be mentioned presently. It is the contention of the appellant that no lands can be excluded as mineral lands from the operation of the homestead law unless known to contain minerals in workable quantities, and that such knowledge can be predicated only upon

the actual discovery of minerals within the very lands in controversy. We believe, on the contrary, that such a narrow interpretation of the broad terms "mineral lands" and "lands valuable for minerals" is not only unnecesary, but wholly unwarranted by the language used or by anything in the legislation and policy of Congress on the subject. True, there are expressions in some of the opinions of this court which, taken from their context, may tend to support the appellant's contention; and similarly, in early decisions of the Land Department, much is said to emphasize, and overemphasize, the importance, in establishing the mineral character of a given tract, of an actual production of mineral, and a demonstration of a workable mine, within its very limits. But we believe that, upon a careful examination of this court's opinions, and of all of the relevant opinions delivered by the Land Department, it will be found that they do not present any obstacle to the acceptance now of the natural and primary meaning of the terms "mineral lands" and "lands valuable for minerals," or bar out any kind of evidence, direct or circumstantial, which is calculated to shed light upon the question whether given lands, at a given time, were or were not more valuable for coal than for other purposes. The true rule, as we regard it, especially in the case of coal lands, requires only such knowledge of mineral value as, in its nature, the subject matter will allow, and permits proof of such knowledge by any evidence, real, direct, or inferential,

which is logically relevant—such, for instance, as practical men of experience are wont to rely upon in acquiring the land for mining purposes.

Let us discuss the decisions of this court to which reference has been made.

In *Deffeback* v. *Hawke*, 115 U. S. 392, the controversy was between the holder under a placer mining entry, the plaintiff, and an occupant within a town site which was settled before, although the attempt to enter for town-site purposes was made after, the date of mineral entry. Judgment was for the plaintiff. The section actually construed here was R. S., section 2392, part of the chapter dealing with town sites, which provided that "no title shall be acquired under the foregoing provisions of this chapter to any *mine* of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws" (p. 404).

There are *dicta* to the effect that under the homestead or town-site laws "land known at the time to be valuable for its minerals" can not be acquired (p. 404). The question was not in issue, however, as there was "no dispute as to the mineral character of the land claimed by the plaintiff" (p. 405). Nor is anything said about the *degree of certainty* required to constitute knowledge. In fact, the court said: "We, therefore, use the term *known* to be valuable at the time of sale, to prevent any doubt being cast upon titles to lands afterwards found to be different in their mineral character from what

was *supposed** when the entry of them was made and the patent issued" (p. 405).

Colorado Coal and Iron Co. v. *United States*, 123 U. S. 307, was a suit by the United States to cancel a patent of alleged coal land acquired under the preemption laws. The question was whether the lands were lands "on which are situated any *known* salines or *mines*" within the meaning of the exception in the preemption act carried into section 2258 R. S. It was held, reviewing the authorities, "that to constitute the exemption contemplated by the preemption act under the head of 'known *mines*,' there should be upon the land *ascertained* coal deposits of such an extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes. The circumstance that there are surface indications of the existence of veins of coal does not constitute a mine" (p. 328). (Italics ours.)

The conclusion apparently reached in that case concerning the present coal-land law was not essential to the point decided and, we submit with deference, is hardly justified by the language of that law as it was revised in the act of March 3, 1873, 17 Stat. 607, and as it now stands in the Revised Statutes, sections 2347 *et seq.* But however this may be, the case affords no justification for applying its strict interpretation of the term "known mines" found in the preemption act to the broader terms

* Italics ours.

"lands valuable for mineral" and "mineral lands" which limit the homestead act. The question was not whether the lands might be entered under the coal-land law, or might not be entered under the homestead law; it was a question whether they were *conclusively* not subject to entry under the preemption law. We say *conclusively*, because the decision, and the reasons which led to it, were evidently an answer to a contention made by the Solicitor General that the patents were not merely voidable but absolutely void under the doctrine laid down in *Morton* v. *Nebraska*, 21 Wall. 660 (cited at the top of page 326 of the report), which held that a patent issued under the preemption act for lands which were notoriously saline in character, and noted as salines on the field books, was absolutely void and conveyed nothing. In the *Colorado Coal and Iron Company* case the Government contended that this same doctrine was applicable even as against an innocent purchaser; but it was only upon the hypothesis that the lands, by their own appearance at the time of entry, were demonstrated to be within the category of "known mines" that this contention was supportable. It was natural, under the circumstances, that the court should lean toward a very strict construction.

Davis's Administrator v. *Weibbold*, 139 U. S. 507, was another construction of the provision in R. S., section 2392, excepting mines of certain metals from the operation of the town-site laws. Evidence offered by defendant that at the time of the town-

site patent the premises were not known to be valuable for mineral, was excluded by the trial court. Judgment for plaintiff was reversed, this court saying: "The exception of mineral lands from grant in the acts of Congress should be considered to apply only to such lands as were at the time of the grant known to be so valuable for their minerals as to justify expenditure for their extraction" (p. 524).

This statement on its face goes farther than the question before the court required.

There are, it is true, intimations that the existence of mineral in the requisite quantity can only be known by development or exploration (pp. 522, 523–524). But this conclusion is negatived by the discussion of the question "in what manner it must be shown that the existence of mines was known at the time the patent for the town site was issued" (p. 526). The development and working of a mine was said to be only one of the ways of proving the requisite knowledge.

The following statement from *Cowell* v. *Lammers*, 10 Sawyer, 246, 257, is quoted with seeming approval: "By the words, 'mineral lands,' must be understood lands known to be such, *or which there is satisfactory reason to believe are such*, at the time of the grant or patent" (p. 521). (Italics ours.)

Dower v. *Richards*, 151 U. S. 658. Here again the exception in the town-site laws was construed, the controversy being between the locator of a mining claim and a holder under a town-site patent. It was held that "in order to except mines or mineral lands

from the operation of a town-site patent, it is not sufficient that the lands do in fact contain minerals, or even valuable minerals, when the town-site patent takes effect; but they must at that time be known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them; and if the lands are not known at that time to be so valuable for mining purposes, the fact that they have once been valuable, or are afterwards discovered to be still valuable, for such purposes, does not defeat or impair the title of persons claiming under the town-site patent" (p. 663).

United States v. *Plowman*, 216 U. S. 372, construed the act of June 3, 1878, 20 Stat. 88, authorizing the cutting of timber upon public lands, "such lands being mineral and not subject to entry under existing laws of the United States except for mineral entry." The case came up on exceptions to the charge of the trial court, which instructed the jury in effect that any lands "lying in reasonably close proximity to or in the general neighborhood of such known mineral tracts" came within the act of 1878. The Government asked for instructions that it was not sufficient to show that the land in question was adjacent to lands valuable for mineral purposes, but that the authority given by the act extended only to lands valuable for minerals (p. 373). After pointing out that "the right to cut is exceptional and quite narrow," the court repeated the statement in *Davis* v. *Weibbold*, *supra*, that only "such lands as were at the time of the grant known to be so valuable

for their minerals as to justify expenditure for their extraction" were mineral lands within the law, and reversed the court below (p. 374). Again there is no attempt to determine what facts constitute the requisite knowledge. The Government's attitude in the present suit is in no wise inconsistent with its position in the *Plowman* case.

In *United States* v. *Iron Silver Mining Company*, 128 U. S. 673, 683, relied on by defendants, the court said:

> It is not enough that there may have been some indications by outcroppings on the surface, of the existence of lodes or veins of rock in place bearing gold or silver or other metal, to justify their designation as "known" veins or lodes. To meet that designation the lodes or veins must be clearly ascertained, and be of such extent as to render the land more valuable on that account, and justify their exploitation. Although pits and shafts have been sunk in various places, and what are termed in mining cross-cuts had been run, only loose gold and small nuggets have been found, mingled with earth, sand and gravel. Lodes and veins in quartz or other rock in place bearing gold or silver or other metal were not disclosed when the application for the patents was made.

It will be observed upon a perusal of the opinion that the evidence failed in that case to show the existence of any veins at all. The alleged outcroppings were all *within* the boundaries of the claim. The

question whether it is legitimate to infer the existence within the disputed premises of a vein *known* to exist without them, was not presented. Furthermore, the case had to do with a statute which in terms excepted only veins or lodes "known to exist" within the boundaries of the claim in dispute. The question whether a vein is known to exist is very different from the question whether land is *valuable* for mineral. An inference which would suffice to determine the latter clearly, to the satisfaction of any buyer of mineral land, might fall short of answering the former.

But even in respect of a "known vein" within the meaning of the placer law this court said, in *Iron Silver Mining Company* v. *Reynolds*, 124 U. S. 374, 384:

> Knowledge of the existence of a lode or vein within the boundaries of a placer claim may be obtained from its outcrop within such boundaries; or from the developments of the placer claim previous to the application for a patent; or by the tracing of the vein from another lode; or perhaps *from the general condition and developments of mining ground adjoining the placer claim*. It may also be obtained from the information of others who have made the necessary explorations to ascertain the fact, and perhaps in other ways. We do not speak of the sufficiency of any of these modes, but mention them merely to show that such knowledge may be had without making hopes and beliefs on the subject its equivalent. As well observed by the court, when the case was here before, it is better that all questions as to what

> kind of evidence is necessary, and we may add sufficient, to prove the knowledge required by the statute, should be settled as they arise. (*Italics ours.*)

Whatever may have been the true limitations of the preemption, the town-site, or similar laws, the homestead law, with which we have to do, is subject to the broad restrictions that *no* "mineral lands" nor any lands "valuable for minerals" shall be entered under it. The exclusion applies alike to coal lands and to other mineral lands. The cases establish that there must be mineral *value* and that it must be "known" at the time of entry or patent. The distinction between lands valuable for coal and lands valuable for other mineral deposits is purely an evidentiary one. Necessarily the evidence must be largely circumstantial. The cases must be rare indeed in which what is termed "real" evidence will suffice—that is to say, the cases in which mineral worth enough to overtop the agricultural value is actually in sight. In nearly all cases the mineral exhibit will furnish no more than a basis for an inference of the quantity and quality of unseen deposits upon the inferred existence of which the valuation of the land must ultimately depend. The presence of the outcrop upon the very land in question may be favorable to its mineral value or may mean little, according to circumstances. All may depend upon the position of the unseen deposit, and that in turn may depend upon the nature of the occurrence and the geological formation. An outcrop

near the edge of a tract, carried in a regular formation dipping out of it, may help to establish mineral value in the adjacent land into which it dips rather than in that upon which it is visible. Coal, being a sedimentary formation, often occurring quite uniformly over wide horizons in conformable layers of other sedimentary rocks, exhibits far greater certainty of direction and continuity than do veins, which consist of matter deposited in irregular fissures traversing the rocks. The distinction is one of degree, however. It would be absurd to say that under no circumstances could the dip of a vein afford satisfactory evidence of the mineral value of land traversed by the plane of the dip projected downward from its outcrop.

We come to the decisions of the Interior Department on which appellant principally relies.

It is true that the department has frequently said that in order to acquire lands under the mineral laws, or in order to prevent their acquisition under the agricultural laws, the mineral claimant in the one case or the mineral protestant against the agricultural entry in the other must show the actual discovery of minerals—that mineral actually exists in fact and not merely in theory. Among these cases are *Hooper* v. *Ferguson*, 2 L. D. 712; *Dughi* v. *Harkins*, *ib.* 721; also *Roberts* v. *Jepson*, 4 L. D. 60, and *Cleghorn* v. *Bird*, *ib.* 478. These cases, however, involve placer mining claims and not coal lands. We suggest therefore, that the rules there laid down are not applicable to coal-land entries.

However, a case which gives color to appellant's contention is *Commissioners of Kings County* v. *Alexander et al.*, 5 L. D. 126, where the coal claimants endeavored to show by geological evidence that the lands in question should be classed as coal lands. This position was overruled by the Secretary of the Interior, who said that proof of the mineral character of the land must be specific and based upon the actual production of minerals; that it is not enough to show that neighboring or adjoining lands are mineral and that the lands in controversy might thereafter develop minerals to such an extent as to demonstrate their mineral character, but that it must be shown as a present fact, from actual production of minerals. In support of this proposition the Secretary cited the cases above mentioned, appearing to overlook the fact that under the placer laws in order to entitle the applicant to a patent there must be an actual discovery of minerals, while there is no such specific provision in the coal-land laws. (See 34 L. D. 194, 200.)

Another case which lends support to the defendant's contention is *Savage* v. *Boynton*, 12 L. D. 612. In that case, however, the Secretary did consider evidence of the dip and angle of inclination of coal measures on adjacent tracts offered to show that coal existed on the lands in controversy at a certain depth, but found that the preponderance of the testimony did not sustain that claim. A somewhat later case, *Scott* v. *Sheldon*, 15 L. D. 361, also shows that the Secretary was prepared to consider expert

evidence as to the mineral character of the land, but sufficient evidence of that nature was not offered to convince him of the existence of coal, especially in the face of the fact that no attempt had ever been made to demonstrate the truth of the supposition.

In *Rucker et al.* v. *Knisley*, 14 L. D. 113, the Secretary considered and gave much weight to the expert testimony of a geologist. This case was cited in *Hamilton* v. *Anderson*, 19 L. D. 168, where it was said that the department had never held that there must be an actual development of coal on each 40-acre subdivision of the 160-acre tract entered.

Subsequently, in *State of Montana* v. *Buley*, 23 L. D. 116 (decided in 1896, long before the entries here in question) the Secretary used this language (p. 119):

> In 1878 coal was opened and mined in this section, and the testimony shows that there are coal mines in the vicinity and adjoining the land in dispute. While this latter fact would not of itself establish the existence of coal on this identical tract, yet it is mentioned to show that in this particular region there is a coal measure, and that it was known prior to November 8, 1889.

The question there involved was whether the land was known to be mineral at the date of the admission of the State, and the Secretary held that it was so known.

Again, in *McWilliams et al.* v. *Green River Coal Association*, 23 L. D. 127, the Secretary quoted with approval the language used in *Hamilton* v. *Anderson, supra:*

> The rule of the Department undoubtedly is that the land must appear to be mineral in character, "as a present fact," and from actual production of mineral, *Rucker et al.* v. *Knisley* and cases cited (14 L. D. 113), but it does not follow, and has never been held by the Department that there must be an actual development of coal on each forty acre subdivision of the one hundred and sixty acres for which entry is allowed under the mining laws.

The rule apparently deducible from the above decisions may be fairly stated as follows: That in all cases where the question of the mineral character of the land was raised, whether on the application for an agricultural or a mineral patent, as in most instances the lands were presumptively agricultural lands, the burden of proof was held to be upon the mineral claimant; and consequently positive evidence was required of the existence of mineral in the land involved. It can not be said that these decisions go so far as to hold that even if a tract of land contain no coal outcrop, and no coal has been actually disclosed by digging or otherwise, a person seeking to acquire it under agricultural entry would be justified in swearing that it was nonmineral, notwithstanding his solemn belief, based on scientific evidence or otherwise, that the tract was in fact valuable for coal. And that is the situation here.

In the decisions cited the controversies were between conflicting claimants of the tracts in question, and the Land Office naturally cast upon the mineral claimant the burden of proving his claim. But here the lands were acquired in an *ex parte* proceeding, and the entrymen concealed what knowledge they had concerning their mineral character. There is nothing in the above decisions to show that if they had revealed this knowledge instead of swearing to its opposite their patents would have been granted by the Land Office.

It should be noted that in most, if not all, of these land cases evidence of minerals found in lands adjacent was introduced and actually considered. The reports do not reveal clearly what this evidence was in any of the cases and therefore we are left in the dark as to the degree of certainty or conviction which it tended to produce. When commented on in the decisions it is found conflicting and unsatisfactory, and resort is thereupon had to the absence of any ocular demonstration of mineral within the disputed premises. That the department did not regard this last as the sole proof of mineral character is conclusively demonstrated by the decisions which we have cited, in which it was expressly held that where several tracts of coal land were sought to be purchased the evidence of actual production of coal might be limited to one of them. Coal lands are always disposed of by legal subdivisions. Each subdivision applied for must be shown to be more valuable for coal than for other purposes.

Consequently, if there had existed in the Land Department a hard and fast rule rejecting geological evidence and accepting only the evidence of actual production of coal in proof of coal character, the department would have required every claimant of more than one subdivision to prove the coal character of each of the subdivisions claimed by evidence of the latter sort.

These considerations all go to show that, whatever the language used in some of these earlier decisions, there was no settled rule requiring the actual production of mineral from the very premises in question as a prerequisite to the establishment of their mineral value. Such is the opinion expressed by the Secretary of the Interior himself in the elaborate and carefully considered instructions concerning coal lands which he issued under date of October 26, 1905, 34 L. D. 194. We venture to quote somewhat liberally from these instructions, and we commend them as a whole to the careful attention of the court, since they contain a review of the previous decisions of the Land Department and of this court upon the question in hand, and reconcile them all in substance with the view which the Secretary so distinctly enunciates—the identical view for which we contend in the present case.

Referring to the decisions of his own department, the Secretary says:

> The use in those decisions, and others in which it is repeated, of the expression "actual production," doubtless, has given rise to a

> rigid rule in the determination of the character of lands not contemplated by the Department. Taken literally, a requirement of an "actual production" from a tract in controversy as a condition to the establishment of its mineral character would exclude from consideration mere exposures of mineral deposits; and this certainly was not intended. Indeed, whilst the decisions have evidently thus far been adverse where evidence of surrounding conditions has not had the support of discoveries or disclosures on the tracts directly involved, it is nevertheless true that such evidence has been given consideration and has never been held inadmissible (p. 200).

This statement will be found fully justified upon a perusal of the decisions themselves. To quote further:

> The coal-land laws, embodied in sections 2347 to 2352, inclusive, of the Revised Statutes, do not prescribe "discovery" upon the land sought as a condition precedent to the acquisition of title, excepting only as they confine the "preference right of entry" to one who has "opened and improved" a mine on the tract. In this they differ from the lode and placer mining laws, whereunder "discovery" within its limits is specifically an indispensable prerequisite to the validity of a location, together constituting the initiation of rights under those laws. Whilst this technical "discovery" does not of itself establish the patentably mineral character of the land, which may be determined in the absence of a

> location, it is naturally a link in the chain of evidence; and analogy may have suggested the association of the same elements in respect to coal lands. But there is no location under the coal-land laws, and the analogy is imperfect. The well known rules of evidence are as applicable here as in any other case, and whatever is relevant to and bears in any degree upon the question of the character of a given tract of land is admissible in evidence to the end of its ascertainment (pp. 200–201).

Referring to geological evidence of the kind in this case, it was said:

> Upon faith of such investigations prudent men often expend large sums of money in the purchase of lands and development of the property. Often the depth or thickness of the overlying strata is such as to prohibit economical exploration from above, and the distance of many tracts from outcrops, or openings made at convenient and accessible points, is too great to justify penetration by drifts or slopes for purposes of preliminary investigation and ascertainment alone. In the nature of things, therefore, reliance must frequently be had upon such evidences as may become the guide of the geologist or coal expert (p. 202).

The proper procedure to be followed thereafter was outlined as follows:

> Mere outcrops, disintegrated by action of the elements and broken and mixed with débris as they often are, seldom bear witness in

> themselves of the quality and quantity of the coal beds behind them. Unless in such cases, therefore, they are sufficiently exploited no determination of the coal character of the overlying lands can be reached by the land department. Nor can opinions, unexplained or expressed by unqualified witnesses, suffice upon any point. The character of the outcrops, or the extent and result of their exploitation, or the nature, extent, and result of exposures of the coal bed otherwise made, the positions of the outcrops or openings with relation to each other and to the tract in controversy, the thickness, merchantable quality, and identifying characteristics of the coal bed, the geological formation and other data whereby the position and areal extent of the coal bed with respect to the tract in controversy are determined, should be fully set out in the evidence, the qualification of the witnesses shown, and the situation illustrated, as far as possible, by plats, charts, photographs, and other exhibits, properly authenticated and introduced in evidence, for the guidance of the land department. Each such case must then be adjudicated upon its individual merits, the question of depth of each ascertained deposit, as affecting its commercial value, to be considered in that connection, if important (pp. 202–203).

If it be said that while there has been a change of position by the Interior Department yet this can not invalidate title previously obtained, the answer is,

first of all, that no one has a vested right in an erroneous construction of the law. If the views expressed in the earlier decisions upon which the company so largely relies were, as we believe they clearly were, directly contrary to the purpose of Congress in reserving lands valuable for minerals, it would be the duty of the court to set them aside even if they had been consistent, continuous, and never reversed; but, as we have shown, such is not the case here. There is uncertainty and variability, to say the least, in the earlier decisions. They do not exhibit a clear, consistent rule and therefore their value as evidence of statutory meaning is but slight. The expressions upon which the company relies have been explained away and rejected in later decisions. Even if the situation were otherwise, the construction for which the appellant contends is so evidently erroneous that it should be rejected without regard to administrative rulings tending to support it.

It puts a premium on the acquisition of actual coal lands under agricultural entries, and if long continued would enable any coal company to acquire tracts valuable for mining purposes at an insignificant price, and in quantities denounced by the policy of the law, so long as soldiers' scrip is available for that purpose. It was not within the design of Congress to permit the acquisition by that means of lands whose chief value lies in their coal deposits; and surely any evidence, geological or otherwise, which bears directly upon the existence and value of those

deposits should be admissible and, in the absence of more direct proof, controlling. A rule which limits proof of this determining fact to the actual production of coal is highly technical and ill adapted to the subject matter.

We can not do better than to quote again from the opinion of the Circuit Court of Appeals:

> * * * if the acts of Congress are to have application to the extensive coal deposits in the western mountainous regions outside the very land in which they outcrop and without exploration by the government by diamond drill at excessive if not prohibitive cost, there must be a more liberal view than that advanced in this case by defendant. It would be anomalous if lands could be acquired from the United States as nonmineral, agricultural lands, and at once be held, dealt in, and sold upon the basis of a coal-bearing character resting upon satisfactory proof. * * * The purpose of Congress is manifest to withdraw from disposition except under particular restrictions those limited areas of the public domain which in general opinion based upon substantial evidence have a special value for mineral contents beyond that arising from their adaptation to agricultural or other like uses. (191 Fed. 795; R. 1083.)

II.

The patents are voidable even though it be conceded that upon the showing made in the record the mineral value of the lands has not been proven.

1. It is the province of the Land Department, under the homestead law, to inquire into and determine the character of the land before entries are allowed or patents issued, and the purpose of the statutory affidavits is to assist it in that inquiry.

This proposition is too well established to require citation or argument.

2. The affidavits upon which the department relied and acted contained material, false, and perjured statements which induced the department to forego the further inquiry which presumably it would have made if the truth had been revealed.

Sneddon and Harrison each swore in his affidavit "that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof * * * any deposit of coal; * * * that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land * * *." (R. 905-906).

At the very time that he took oath to this effect, Sneddon believed that the lands contained valuable

coal deposits. He had expressed this belief to at least three witnesses, as well as his intention of acquiring them by scrip or homestead entry. (R. 126–127, 146–148, 225–226, 330.) As defendant did not call Sneddon as a witness, this testimony stands undisputed upon the record. Harrison's knowledge is not directly shown. As he was associated with Sneddon in the scrip transaction, however, it may fairly be assumed that he shared the latter's information. At all events there is nothing to suggest that he had any knowledge or belief to the contrary, nor does he appear to testify.

It follows that each entryman swore falsely when he declared that *to his knowledge* there was not, within the limits of the tract entered, any deposit of coal, and that the land was essentially nonmineral. This does not mean, as appellant assumes, that he did not know of the presence of any deposit of coal; it means that he knew there was not any such deposit within the limits of his entry. This is evidenced by the printed requirement at the top of each nonmineral affidavit:

> This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

Knowledge, not ignorance, was meant to be the basis of the affidavit. Appellant's interpretation would strip it of all efficacy as a means of preventing the acquisition of mineral lands under nonmineral entries. Of course the knowledge of the absence of coal can not be absolute in the nature

of the case, any more than can knowledge of its presence in workable quantities. But the information of these entrymen was inconsistent with a belief, even, that the land did not contain coal, much more with any knowledge to that effect.

Again, the statement in the affidavit that the land was "essentially nonmineral land" was not designed as an expression of the affiant's legal opinion concerning the status of the lands, but as a statement of fact regarding their mineral value.

Furthermore, we have the statement that the applications are "not made for the purpose of fraudulently obtaining title to mineral lands."

All of the above statements are such as would not be made by persons intending (as the applicants intended) to acquire the lands for coal mining purposes and cognizant (as these applicants were) of the facts tending to establish the coal character, unless those persons were desirous of deluding the department and preventing inquiry. Knowing as they did that the very purpose of the affidavits was to inform the department fully concerning the land, and that the department would, in all probability, rely upon them, it was the duty of the applicants to reveal their object and their belief, and to state the facts as they were. Their failure to do this prevented the department from making further inquiry.

In either aspect Sneddon and Harrison swore falsely in a matter material to the acquisition of the lands.

3. *This fraud is such that it vitiates the patents and renders them voidable.*

It is a recognized rule of criminal law that if a witness supposes he is testifying falsely, such testimony is corrupt as to him and a perversion of truth in the course of justice. It is therefore perjury even though what he says may in fact be true. See 2 Bishop, New Criminal Law, sections 1043, 1048; 2 Russell on Crimes, 597 (1857); Hawkins, Pleas of the Crown, 322.

The same result would presumably be reached under section 5392 of the Revised Statutes, which declares that one who wilfully "states or subscribes any material matter which he does not believe to be true is guilty of perjury."

If therefore the entrymen believed that these lands were chiefly valuable for their coal (and of this the evidence leaves little or no room for doubt), in making their nonmineral affidavits they committed perjury and attempted to impose on the officers of the Government. If in such case they would be liable to indictment, it would seem to follow *a fortiori* that in a civil case they should be held to have forfeited all rights they may have acquired by their locations.

In disposing of its public domain the Government is concerned not so much in getting a valuable consideration for the land patented as in enforcing the policy established by Congress in that regard. These entrymen are wrongdoers against whom the Government seeks to vindicate its policy in reference to the disposition of its public domain, and in establish-

ing that policy Congress had a right to assume that individuals or associations of individuals would not attempt to defeat it by means of fraudulent schemes or otherwise. *United States* v. *Trinidad Coal Co.*, 137 U. S. 160.

Considering a similar question this court held in *Hyde* v. *Shine*, 199 U. S. 62, that the result of appellant's argument was that although a gross imposition was practiced upon the States by the procuring of patents in favor of fictitious or disqualified persons by the use of forged affidavits, assignments or other documents, no indictment therefor would lie because the States had received the same consideration they would have received had the patents been issued to persons qualified under the statutes to purchase the lands. The unsoundness of such an argument was held by the court to need no demonstration, as the States were held to have a right to punish a violation of a statute enacted as part of their public policy notwithstanding they might have suffered no pecuniary damage therefor. Continuing, the court said:

> The same argument applies to the United States whose lands have been procured in plain violation of the spirit, if not the letter, of the statute, and by a further step in the same fraudulent scheme (p. 81).

Again, in the case of *United States* v. *Keitel*, 211 U. S. 370, the court used the following language:

> The unsoundness of the argument that as when the prohibited entries were made the

> price of the lands was paid to the United States, therefore the United States could not have been defrauded, is refuted by its mere statement. If it were true, then in every case, however flagrant, where the lands of the United States were procured in violation of express prohibitions of law, the element of fraud would cease to exist by the mere payment of the price; that is to say, the successful operation of the fraud would deprive the transaction of its fraudulent character (394).

The court considered it unnecessary to further point out the inherent weakness of such an argument.

So, in this case, if these applicants actually believed the lands to be valuable for coal, and willfully represented that the lands were essentially nonmineral and contained no coal, at the same time concealing from the officers of the Government's Land Department such facts as that the lands lay opposite and immediately adjacent to a well-defined coal outcrop which dipped toward the lands in controversy, there would seem to be no question that they were guilty of a flagrant fraud, irrespective of what subsequent events might show as to the true character of the lands.

4. *Under these circumstances the burden of proof shifts from the Government, which is no longer obliged to establish the mineral character of the lands.*

The case seems to fall within the principle of *Moffat* v. *United States*, 112 U. S. 24, where the charge was that through the connivance of local land

officers, the patents were issued to fictitious persons. The court there said (p. 30):

> The presumption as to the regularity of the proceedings which precede the issue of a patent of the United States for land, is founded upon the theory that every officer charged with supervising any part of them, and acting under the obligation of his oath, will do his duty, and is indulged as a protection against collateral attacks of third parties. It may be admitted, as stated by counsel, that if upon any state of facts the patent might have been lawfully issued, the court will presume, as against such collateral attacks, that the facts existed; but that presumption has no place in a suit by the United States directly assailing the patent, and seeking its cancellation for fraud in the conduct of their officers. In such a suit the burden of proof is undoubtedly, in the first instance, on the Government to show a fatal irregularity or corrupt conduct on their part; but when a case is established, which, if unexplained, would warrant a conclusion against them, the burden of proof is shifted, and they must show such integrity of conduct and such a compliance with the law as will sustain the patent. Its validity is, then, determinable, like any other controverted fact, upon the weight of evidence produced in support of and against their action.

In the case at bar no charge of official corruption is made, but the Government has established with conclusive force the existence of fraudulent repre-

sentation and concealment which prevented its officers from performing their duty. No more is needed. If, under such circumstances, the question of mineral or non-mineral character be material at all, we submit that the burden of proving what it was must rest upon the appellants.

5. *The appellant company is not an innocent purchaser.*

If the company lacked actual knowledge of the fraud, it would not thereby avoid the onus which attaches thereto. Sneddon and Harrison were unquestionably the company's agents; the knowledge of the agent is the knowledge of the principal where, as here, the agent has no interest adverse to that of his principal. *McCaskill Co.* v. *United States*, 216 U. S. 504, 514.

Besides, a corporation can not, any more than a natural person, retain an advantage which has come to it through fraud and at the same time repudiate the fraud, but will be held to have adopted the wrongful act and to be answerable therefor. 5 Thompson, Corporations (2d ed.), sections 5474, 5479, and cases cited.

Nor need we rely upon the doctrine of imputed knowledge. The fraudulent acquisition of these lands was conducted at the instigation and for the benefit of the defendant company, which supplied the scrip. It paid a price for them vastly in excess of their value for agricultural uses or for any other purpose except the mining of coal. Its whole course of dealing is utterly inconsistent with any

other theory than that it believed them to be lands valuable for coal and acquired them solely on account of that value. The company was therefore cognizant of the fraud perpetrated upon the Government by the false affidavits of Sneddon and Harrison, and was properly charged with obtaining the lands by means of a fraudulent conspiracy.

CONCLUSION.

The judgment of the Circuit Court of Appeals should be affirmed.

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